

AGENDA AND SUPPORTING PAPERS FOR SPECIAL MEETING

22 OCTOBER 2020

DATE: 22 October 2020

TIME: 2.00 p.m

VENUE: Council Chambers
West Coast Regional Council Offices
388 Main South Road
Paroa

AGENDA: Decisions on Community Consultation Reports and
Funding Agreements

THE WEST COAST REGIONAL COUNCIL

Notice is hereby given that a **SPECIAL COUNCIL MEETING** of the West Coast Regional Council will be held in the Offices of the West Coast Regional Council,
388 Main South Road, Greymouth on

Thursday, 22 October 2020 commencing at 2.00 pm

A.J. BIRCHFIELD
CHAIRPERSON

V. SMITH
CHIEF EXECUTIVE OFFICER

| <u>AGENDA</u> <u>NUMBERS</u> | <u>PAGE</u> <u>NUMBER</u> | <u>BUSINESS</u> |
|---------------------------------|------------------------------|--|
| 1. | | APOLOGIES |
| 2. | | REPORTS |
| | 1 - 2 | 2.1 Consultation Report - Westport Rating District |
| | 3 - 8 | 2.2 Consultation Report - Hokitika Rating District |
| | 9 - 10 | 2.3 Consultation Report – Franz Josef Rating District |
| | 11 | 2.4 Greymouth Floodwall |
| | 12 - 14 | 2.5 Infrastructure Industry Reference Group (IRG) Funding Agreements |
| | 15 - 36 | 2.6 Funding Agreement – Franz Josef |
| | 37 - 66 | 2.7 Funding Agreement - WCRC Climate Resilience Programme |

THE WEST COAST REGIONAL COUNCIL

Prepared for: Council Meeting – 22 October 2020

Prepared by: Randal Beal, Director of Operations

Date: 22 October 2020

Subject: **Council Report – Consultation Report Westport Rating District**

Introduction

Council submitted for a total of \$45,100,000 funding to the Crown Infrastructure Projects applications. An application on behalf of the Westport community was successful in securing up to \$400,000 for the Advanced Flood Warning project.

The application for up to \$8 million of co-funding towards a flood protection scheme was unsuccessful due to not having a rating district to provide co-funding towards the project.

Feedback was sought from the Westport community on:

- Forming a rating district to provide the required co-funding to allow the project to proceed
- Proposed Governance structure of the Rating District
- Proposed Boundary of the Rating District

The consultation document was clear that the proposed rate strike was specifically for meeting the co-funding requirements for the advanced flood warning system.

The consultation document also stated any future projects, such as a flood protection scheme or further recommendations from the Westport 2100 Working Group, would be consulted on with the community at the time of the proposal.

Results of Survey and drop in sessions

536 Submissions were received

64% of respondents support co-funding of the project

63% of respondents support the proposed Governance Structure

62% of respondents support the proposed boundary of the Rating District

The public drop in sessions were very positive and were well received by those that attended them.

Common Themes of written feedback

"My Property is not at risk of flooding"

"We need floodwalls as well"

"Gravel extraction is needed"

"Affordability, should be included in existing general rates, CDEM rates"

"Thank you BT mining"

RECOMMENDATION

That the West Coast Regional Council:

- 1. Receives this report*
- 2. Accepts the co-funding of \$155,000 from the Buller District Council for the Advanced Flood Warning project*
- 3. Forms a Westport Rating District based on the boundary consulted on with a zero targeted rate for 2021/22 financial year, provided the \$155,000 is received in full*
- 4. Reconvenes the Westport 2100 Working Group to identify priority recommendations*
- 5. Engages with Buller District Council, Te Rūnanga o Ngāti Waewae and Waka Kotahi to form a Westport Rating District Joint Committee to oversee development of a strategy and action plan for inclusion in Council's 2021-2030 Long Term Plan consultation.*

Randal Beal

Director of Operations

THE WEST COAST REGIONAL COUNCIL

Prepared for: Council Meeting – 22 October 2020
 Prepared by: Randal Beal, Director of Operations
 Date: 16 October 2020
 Subject: **Council Report – Consultation Report Hokitika Rating District**

Introduction

Council submitted for a total of \$45,100,000 funding to the Crown Infrastructure Projects applications. An application on behalf of the Hokitika and Kaniere communities was successful in securing up to \$3,800,000 for the flood and erosion protection project.

The proposed project is the extension of the sea wall to Richards Drive, and the construction of a river flood protection scheme to provide far greater resilience and protection between Kaniere and Sunset point from a 1% AEP flood event¹.

Feedback was sought from the Hokitika and Kaniere communities on:

- Forming a rating district to provide the required co-funding to allow the project to proceed
- Proposed Governance structure of the Rating District
- Proposed Boundary of the Rating District.

Results of Survey and drop in sessions

- 339 submissions were received
- 66% of respondents support co-funding of the project
- 62% of respondents support the term of the loan
- 62% of respondents support the proposed Governance Structure
- 53% of respondents support the proposed boundary of the Rating District

The public drop-in sessions were very positive and well received by those that attended them.

Common themes of written feedback:

- “My Property is not at risk of flooding”
- “Proposed boundary should be extended”
- “Gravel extraction is needed”
- “Affordability”
- “Don’t support the governance structure”
- “Concerned about environmental impacts”
- “Lack of Information”.

Petition received from “Hokitika Coastal Protection Alliance”

General comment - Some of the signatories to the attached document have provided a separate response on the ratepayer submission form. These have been included in the summary. Not all signatories to the petition are rate payers.

¹ A flood event that has a 1% Annual Exceedance Probability (AEP) means that every year there is a 1% likelihood of it occurring. In the past, this was commonly referred to as a 1 in a 100 year flood event. This is misleading as it may happen one year, and not for many more, or happen several years concurrently. The 1% AEP is a more representative reference.

Flood modelling of the Hokitika River has been carried out in 2020. The results show that the town is vulnerable to flooding 1% AEP flood event, with existing stop banks likely failing before this magnitude event is reached.

Most climate change projections predict an increase and intensification of rainstorms², resulting in an increase in flood magnitude at a given frequency of occurrence (a steepening of the magnitude-frequency curve). This means that the probability/risk of damage (e.g. flood damage after stopbanks are overtopped) increases, or one could say that the return period of the design event for flood protection will be shorter.

There is also a predicted increase in westerly winds from a poleward shift in mid-latitude cyclones. Ex-tropical cyclones (like Fehi and Gita in 2018) are predicted to become stronger (although lessen in frequency).

Government is currently focussing on resilience in regards to the effects of climate change as opposed to waiting until the town floods due to the failure of old and unmaintained flood protection of questionable quality. Note that 90% of flood banks fail before over-topping.

Consultation for flood and erosion protection projects is not a poll.

² <https://www.mfe.govt.nz/climate-change/likely-impacts-of-climate-change/how-could-climate-change-affect-my-region>

<https://niwa.co.nz/our-science/climate/information-and-resources/clivar/scenarios>

Council received a submissions from the Hokitika Coastal Protection Alliance. Due to the number of signatories to the submission, and the number of points made, staff have taken the opportunity to address these more fully in the table below:

| Feedback from Hokitika Coastal Protection Alliance | Staff comment |
|--|--|
| <p>We feel a combined response is required. We consider there is a lack of information on the need, alignment and/or detail of proposed work. As such the current submission process looks like an attempt to obtain enough positive responses from the uninformed to allow Council officers to proceed without the need for peer review or consideration of effects on amenity values and coastal /river processes.</p> | <p>The coastal erosion occurring over the past 18 months is well known.</p> <p>Detail for the alignment of the protection works will be provided through an independent expert. The advice from the independent expert will be presented to the Joint Committee before work commences.</p> |
| <p>There is no urgency or emergency requiring sea walls or the raising of levies around Hokitika. We challenge Council to provide evidence that there is.</p> | <p>The current coastal erosion over the last 18 months is a well-known issue. This is an opportunity to put protection works in place before there is a greater emergency at hand with the further loss of land and potentially infrastructure and property. This is not a new idea, but one that Council has expedited given Central Government is making available a significant co-funding contribution towards the cost. The advice Council has received is that the proposed works will be needed at some point, and normally, these would be funded 100% by the ratepayers. Extension of the existing seawall provides the opportunity for the community to consider a long-term plan for managing coastal erosion. We understand that there has been a cyclical erosion and aggradation cycle along the coastline. However, there is no ability to determine when the current aggradation cycle will start stop.</p> <p>Most climate change projections predict an intensification of rainstorms, increasing in the magnitude of floods at a given frequency of occurrence (a steepening of the magnitude-frequency curve). This means that the probability/risk of damage (e.g. flood damage after stopbanks are overtopped) increases, or one could say that the return period of the design event for flood protection will be shorter.</p> <p>An increase in westerly winds from a poleward shift in mid-latitude cyclones has also been predicted. Ex-tropical cyclones (like Fehi and Gita in 2018) are predicted to get stronger (although lessen in frequency).</p> <p>Currently Government's focus is on the resilience to the effects of climate change as opposed to waiting until the town floods due to failure of old and</p> |

| Feedback from Hokitika Coastal Protection Alliance | Staff comment |
|--|---|
| | <p>unmaintained flood protection of questionable quality. Note that 90% of flood banks fail before over-topping.</p> <p>Flood modelling of the Hokitika River was undertaken at the beginning of 2020. The results show that Hokitika has a 1% AEP³ of flooding, with stopbanks likely to fail before this magnitude of event is reached.</p> |
| <p>There has been an erosive cycle on the Hokitika beach over the last year. In the context of historical events this has been minor and there is no immediate threat to property.</p> | <p>Extension of the existing seawall provides the opportunity for the community to consider a long-term plan for managing coastal erosion. We understand that there has been a cyclical erosion and aggradation cycle along the coastline. However, there is no ability to determine when, or if, the aggradation cycle will start again.</p> |
| <p>However, we have seen Council undertake temporary works under emergency provisions which diminished the amenity values of the beach yet provided no real protection. They have in effect been a poor solution looking for a problem.</p> | <p>The temporary works were identified as being a short-term solution whilst a longer-term solution was investigated. The Central Government co-funding has provided an opportunity for Council to progress an affordable medium-term solution for property owners.</p> |
| <p>As a group of concerned and informed residents, we are not prepared to stand by and allow the Council to undertake any further work under 'emergency' provisions, without recourse to the full range of options available to us.</p> | <p>Both the Regional and District Councils are taking a "Hazard scape" approach for the benefit and protection of the wider Hokitika community. Rating Districts are often formed to address the effects of short or long term hazards. Long term options require a wider conversation and planning approach.</p> |
| <p>The proposal to combine the Hokitika and Kanieri rating districts looks to us like an attempt to socialise the cost of the walls over the whole community. This can only encourage those most affected by these proposals to disengage from the process, giving Council more freedom to do as they wish. We also have concerns about the proposed rating district, including:</p> <ul style="list-style-type: none"> a) insufficient information that has been made available to the wider Hokitika community; and b) the process for making informed and inclusive decisions about future rating levels and expenditure. | <p>Decisions to combine the rating districts, and extending the boundary, are not undertaken lightly. There is no absolute science in the way a rating district is established, however Council has to make the best practicable course of action based on the potential beneficiaries of the protection infrastructure. The whole community will benefit from having greater protection to the township, access to essential services and a better protected economy. Floods are NZ's most frequent and costly natural hazard and no matter whether someone has a property within a flood zone or not, they are more than likely to be affected by the wider implications of the flooding.</p> |

³ A flood event that has a 1% Annual Exceedance Probability (AEP) means that every year there is a 1% likelihood of it occurring. In the past, this was commonly referred to as a 1 in a 100 year flood event. This is misleading as it may happen one year, and not for many more, or happen several years concurrently. The 1% AEP is a more representative reference.

| Feedback from Hokitika Coastal Protection Alliance | Staff comment |
|---|---|
| <p>We consider the seawall built at Hokitika Town Centre (up to Stafford St) has been placed too far out to sea. This has degraded the natural character of the coastline and suppressed the natural process of driftwood accumulation, dune formation and growth of coastal vegetation. It offers limited protection from storm surges as evidenced by cyclone Fehi. In fact, it suppresses the natural processes that can offer protection. It also impedes safe access to the Beach.</p> | <p>The access ramps on the current sea wall were most damaged by the current erosion and sea processes. Maintenance has been suspended based on affordability. The current sea wall provides critical, and irrefutable, protection for the CBD.</p> <p>Safe access to the beach is also impeded by having a 2-3m high vertical scarp due to the erosion that has occurred. With regards to the alignment of the extension, it is likely that it will be set back further from the shoreface than the existing seawall due to the location of the pertinent assets and infrastructure.</p> |
| <p>We will strenuously oppose any attempt to continue this design concept further north of Stafford St.</p> | <p>The design of the original seawall was peer reviewed by a highly qualified Coastal Engineer, and is in keeping with the standard rock revetment design used throughout NZ. With regards to the alignment of the extension, it is likely that it will be set back further from the shoreface than the existing seawall due to the location of the pertinent assets and infrastructure.</p> |
| <p>We consider there are planning and engineering options available that would not destroy the amenity values of the beach and would enhance the natural processes that improve coastal resilience and mitigate storm surges.</p> | <p>Any “hard engineering” solutions will impact on the amenity values of the beach. The design and alignment will take this into consideration. Engineering solutions will be designed and undertaken in line with best practice NZ coastal engineering practices.</p> |
| <p>Storm surges are the only immediate threat to Hokitika beachfront properties.</p> | <p>Climate change is expected to affect coastal areas through increased coastal erosion, more frequent and extensive coastal flooding and higher storm surges. We understand that there has been a cyclical erosion and aggradation cycle along the coastline. However, there is no ability to determine when, or if, the aggradation cycle will start again.</p> |
| <p>Flooding in low lying parts of Hokitika (e.g. CBD and Gibson Quay) is due to stormwater, not the overtopping of levies. Council's proposals in this respect will do nothing to mitigate flooding. Improvements to Stormwater would. We offer no comment on the need for banks in the vicinity of Kaniere Bridge.</p> | <p>The depth and velocity of floodwaters (shown in the Gardner Report) due to the ‘over-topping of levies’ will far outweigh the hazard due to the backup of stormwater. However, the District Council are also addressing what is required to mitigate the effects of stormwater induced flooding which will provide further resilience.</p> |
| <p>We consider that Central Government would prefer emergency funding allocated to be spent well, rather than quickly. We therefore hope that</p> | <p>We also agree that Central Government would prefer funding to be spent well, not quickly. This is a proposal that Council has been considering since the current erosion cycle began. The offer from Central Government to stimulate the</p> |

| Feedback from Hokitika Coastal Protection Alliance | Staff comment |
|--|--|
| <p>Council undertake a process that ensures:</p> <ul style="list-style-type: none"> a) The need for any work is made public through dissemination of evidence with the opportunity for review b) Any work is subject to a design, review and consultation process before proceeding. | <p>economy following the impact of Covid-19 has enabled Council to move more quickly on this.</p> <p>The consultation that Council has embarked on over the past four weeks has provided the public with the opportunity to find out more about the potential infrastructure works.</p> |
| <p>Our group (the undersigned) is called the Hokitika Coastal Protection Alliance (HCPA). It is small only because of the short time frame available. Council should be aware that several of the undersigned have returned positive responses to the submission but have changed their mind once the points raised in this submission have been put to them. We consider the current submission process to be invalid due to a lack of information.</p> | <p>We appreciate the feedback provided by the HCPA. This provides an opportunity to address concerns that the Alliance has, and ones that others in the community may also have. By getting these issues out in the open and answering them we are doing our best to ensure that all ratepayers have the information they need, or feel they have the ability to ask the questions that they want to. We are happy to provide further information as relevant.</p> |

RECOMMENDATIONS

That the West Coast Regional Council:

1. *Receives this report.*
2. *Strikes a rate to meet the required co-funding for the Hokitika flood and coastal erosion IRG “shovel ready” project.*
3. *Merges and extends the boundaries of the Kaniere and Hokitika Rating District.*

Randal Beal
Director of Operations

THE WEST COAST REGIONAL COUNCIL

Prepared for: Council Meeting – 22 October 2020
 Prepared by: Randal Beal, Director of Operations
 Date: 16 October 2020
 Subject: **Consultation Report Franz Josef Rating District**

Introduction

Council submitted for a total of \$45,100,000 funding to the Crown Infrastructure Projects applications. An application on behalf of the Franz Josef community was successful in securing up to \$18,000,000 for a 10 year community resilience plan.

The application for the proposed project involves raising all existing flood protection assets below the Franz Josef Bridge by 2m. New flood protection assets will be constructed from the Heliport Wall to the 55km Corner, as well as a new wall between Rata Knoll and the "Milton and Others" stop bank. The raising of the bridge and approaches is also included in the proposal.

In 2019, Council hosted a delegation from the community who brought a clear message to Council that they wanted a 10 year management plan to provide security for investment into Franz Josef, and that the community as a whole has to be involved in the management of the hazard from the Waiho River.

Waka Kotahi (NZTA), West Coast Regional Council and Westland District Council have collaborated on the design and co-funding of this project.

Feedback was sought from the Franz Josef community on:

- Forming a rating district to provide the required co-funding to allow the project to proceed
- Proposed term of the loan
- Proposed Governance structure of the Rating District
- Proposed merging and extension of the boundary of the Rating District

Results of Survey and drop in sessions

108 Submissions were received

45% of respondents support co-funding of the project*

*An additional 18% of the respondents were in favour of the project but voted against it

43% of respondents support the term of the loan

33% of respondents support the proposed Governance Structure

52% of respondents support the proposed boundary of the Rating District

The public drop in session was positive and was well received by those that attended it.

Common Themes of written feedback

"Need local rate payers on the governance group"

“Support the project but not NZTA’s involvement”

“My property shouldn’t be included”

“Term of the loan doesn’t match the project”

RECOMMENDATIONS

That the West Coast Regional Council:

- 1. Receives this report*
- 2. Strikes a targeted rate to meet the co-funding requirements of the IRG “shovel ready” infrastructure project*
- 3. Merges and extends the Franz Josef and Lower Waiho Rating Districts based on the boundary consulted on.*
- 4. Add a differential to the “Stony Creek extension” area*
- 5. Engages with Westland District Council, Te Runanga o Makaawhio, Department of Conservation and Waka Kotahi to form a Franz Josef Rating District Joint Committee to oversee development of a strategy and action plan for inclusion in Council’s 2021-2031 Long Term Plan consultation.*

Randal Beal

Director of Operations

THE WEST COAST REGIONAL COUNCIL

Prepared for: Council Meeting – 22 October 2020
 Prepared by: Randal Beal, Director of Operations
 Date: 20 October 2020
 Subject: **Council Report – Greymouth Floodwall**

Introduction

Council submitted for a total of \$45,100,000 funding to the Crown Infrastructure Projects applications. An application on behalf of the Greymouth community was successful in securing up to \$1,950,000 for the stage two of the Greymouth Floodwall upgrade.

The Greymouth Floodwall Joint Committee met on the 13th October to discuss the staff recommendations and works reports.

Shovel-Ready Infrastructure Climate Resilience Projects

The Provincial Development Unit has announced that funding for Stage Two of the Mawhera Quay Flood Protection works has been approved subject to co-funding of 25% of the project cost being secured.

In 2009 Stage One of the upgrade raised the Mawhera Quay, Fisherman’s Wharf and Turamaha Street sections of the floodwall to the 1 in 150 year ARI level (7400 cumecs + 600mm freeboard).

Due to the costs of raising the full length of the floodwall to the 150 year level the project was staged with the remaining gravel stopbanks raised to the 1 in 50 year ARI (6600 cumecs with 600mm freeboard) in 2009, with Stage two (gravel stopbanks raised to the 150 year level) to be completed in 2029 when the loan for Stage One was paid off.

The full cost of the Stage Two works is estimated to be \$2,600,000. To secure the funding the remaining \$650,000 must be funded by the Greymouth Floodwall Rating District, and the works must be commenced within 12 months.

The rating impact of this funding is \$6.07 per \$100,000 of capital value.

Final construction drawings are yet to be completed therefore they will be subject to change.

RECOMMENDATIONS

That the West Coast Regional Council:

1. *Receives this report*
2. *Allows for the required co-funding within the current rate strike to meet the co-funding requirements of the IRG “shovel ready” infrastructure project*

Randal Beal

Director of Operations

THE WEST COAST REGIONAL COUNCIL

Prepared for: Council Meeting – 22 October 2020
Prepared by: Randal Beal, Director of Operations
Date: 22 October 2020
Subject: **Council Report – Infrastructure Industry Reference Group (IRG)
Funding Agreements**

Introduction

Council submitted for a total of \$45,100,000 funding to the Crown Infrastructure Projects applications. An application was successful in securing up to \$24,150,000 for;

- Franz Josef up to \$18,000,000
- Hokitika up to \$3,800,000
- Greymouth up to \$1,950,000
- Westport up to \$400,000

The application for up to \$8 million of co-funding towards a flood protection scheme for Westport was unsuccessful due to not having a rating district to provide co-funding towards the project.

RECOMMENDATION

That the West Coast Regional Council:

1. *Receives this report*
2. *Approves the signing of the IRG funding agreements when negotiations are complete*

Randal Beal

Director of Operations

20 August 2020

West Coast Regional Council

Attention: Robert Mallinson

Email: rm@wrc.govt.nz

CC: Sharon Mason (Sharon.mason@bdc.govt.nz) Paul Morris (paul.morris@greydc.govt.nz)
Simon Bastion (simon.bastion@westlanddc.govt.nz)

Tēnā koe Robert,

Infrastructure Industry Reference Group “Shovel-Ready” Infrastructure Projects

Thank you for your application to the Infrastructure Industry Reference Group (IRG).

The Provincial Development Unit (PDU) is pleased to advise you that the following projects have been **approved in-principle** for funding from the Government’s COVID-19 Response and Recovery Fund:

| Name of Project | Type of Funding | NZD\$ excluding GST |
|--|-----------------|---------------------|
| Franz Josef (Waiho River Stop Bank Protection) | Grant | Up to \$18,000,000 |
| Hokitika Flood and Coastal Erosion Protection | Grant | Up to \$3,800,000 |
| Mawhera Quay Flood Protection Wall Upgrade (Stage 2) | Grant | Up to \$1,950,000 |
| Westport (Buller River) Flood warning system | Grant | Up to \$400,000 |

As you’re aware, the Government established the IRG to identify a pipeline of shovel-ready projects to support the economy during the COVID-19 rebuild. The PDU has been tasked to deliver a number of these projects, including this one.



The above funding is approved in-principle, subject to final approval from IRG Ministers, and prior to a funding agreement being negotiated and finalised with you.

Timeframes

Once final approval is attained, it will be on the basis that the project is ready to proceed in supporting your region's quick recovery from the impacts of COVID-19. It is therefore a requirement that a Funding Agreement is completed between you and the Ministry within 30 working days from the IRG Ministers' approval. If the Ministry does not receive a signed copy of your Funding Agreement by the end of the 30 working days, there is a risk that your funding may be reprioritised.

Information Required

In order to develop our funding agreement with you, we need to promptly agree the following which will be included in our standard contract template:

1. **Confirmation of key contact** – who will be the key contact from within your organisation.
2. **Social Procurement Outcomes** – both parties will agree appropriate, measurable and achievable social procurement objectives for the project.

Your regional lead will be in touch to discuss this further with you.

If you have also made an application to the PGF for all or part of this project(s) your application will be withdrawn from the PGF process.

If you have any questions in the meantime, please contact your regional lead Penny Bicknell at Penny.Bicknell@mbie.govt.nz

Nāku noa, nā

Ben Dalton
Chief Operating Officer
Provincial Development Unit
Ministry of Business, Innovation and Employment

**INFRASTRUCTURE REFERENCE GROUP
 PROGRAMME OF FLOODPLAIN RISK MANAGEMENT
 FUNDING AGREEMENT
 FOR**

**WEST COAST REGIONAL COUNCIL (Franz Josef)
 CLIMATE RESILIENCE PROGRAMME**

BETWEEN The Sovereign in Right of New Zealand acting by and through the Chief Executive of the Ministry of Business, Innovation and Employment (“**Ministry**”)

AND West Coast Regional Council listed in Part 1 of Schedule 2 to the Local Government Act 2002, with offices at [main address] (“**Recipient**”)

BACKGROUND

The Ministry wishes to contribute to the Programme by providing Funding from the appropriation set out in Schedule 1 (Details) on the terms set out in this Agreement.

AGREEMENT

The Ministry will pay the Funding to the Recipient, and the Recipient accepts the Funding, on the terms and conditions set out in Schedule 1 (Details), Schedule 2 (Funding Agreement Standard Terms and Conditions), Schedule 3 (Social Procurement Outcomes), Schedule 4 (Report Template) and Schedule 5 (Work Programmes).

SIGNED by the **SOVEREIGN IN RIGHT
 OF NEW ZEALAND** acting by and
 through the Chief Executive of the
 Ministry of Business, Innovation and
 Employment or their authorised
 delegate:)

 [INSERT NAME]

 [INSERT POSITION]

 Date

SIGNED for and on behalf of [PARTY])
 by its authorised signatory:)

 Signature

 Full Name

 Position

 Date

SCHEDULE 1 - DETAILS

1 CONTEXT

- 1.1 In Budget 2020, Cabinet agreed to provide a \$3 billion investment in infrastructure to support New Zealand's economic recovery as part of the 11 May COVID-19 Response and Recovery Fund [CAB-20-MIN-0219.04 refers].
- 1.2 The Government established the Infrastructure Reference Group (**IRG**) to identify a pipeline of shovel-ready projects to support the economy during the COVID-19 rebuild. The process was supported by Crown Infrastructure Partners.
- 1.3 On 24 June 2020, the Cabinet Economic Development Committee, agreed that the Ministry (acting through the Provincial Development Unit) would be responsible for delivering projects approved by IRG Ministers where they are best placed to do so [CAB-20-MIN-0341 refers].

2 APPROPRIATION AND APPROVAL PROCESS

- 2.1 Funding is from a Non-departmental Other Expenses Supporting Infrastructure Appropriation, Vote Business, Science and Innovation authorised by Cabinet on 20 July 2020 [CAB-20-MIN-0341 refers].

3 FUNDING

- 3.1 **Funding Total:** this Agreement provides funding for a total amount of **up to \$18,000,000** (plus GST, if any) (**Funding**). This is the Total Maximum Amount Payable by the Ministry.
- 3.2 Subject to the terms of this Agreement, the Ministry will pay the Funding in accordance with the payment schedule set out in the relevant Work Programme (Schedule 5).
- 3.3 **Application of Funding:** The Recipient:
- (a) must apply the Funding in accordance with the relevant Work Programme (Schedule 5), subject to any variation agreed with the Ministry in writing;
 - (b) will use its best endeavours to deliver each Work Programme in the manner set out in the relevant Work Programme; and
 - (c) must not use the Funding for any part of a Work Programme that is or was already funded by any party (including the Recipient, unless otherwise approved by the Ministry in writing), or in relation to any activity which the Ministry advises the Recipient that it may not apply the Funding to.
- 3.4 **Overruns:** The Parties acknowledge that the Funding in clause 3.1 is the Total Maximum Amount Payable by the Ministry for the Programme (in the aggregate), and that the Recipient will be liable for all cost overruns in relation to the delivery of the Programme. The Ministry will not be liable for any cost overruns. The Recipient will carefully monitor the likelihood of cost overruns through its budgeting and reporting process, and will notify the Ministry as soon as it is aware that there is a likelihood that Programme Costs will exceed the Total Maximum Amount Payable under this Agreement.

4 PROGRAMME

- 4.1 **Programme:** The Recipient will use the Funding to deliver a floodplain risk management programme of works, the West Coast Regional Council (Franz Josef) Climate Resilience Programme

(**Programme**). The Programme comprises the following Work Programmes, as set out in Schedule 5:

| Work Programme | Schedule Reference | Start Date | End Date | Construction Commencement Date (by no later than 12 months from the Start Date) | Work Programme Cost, plus GST (if any) |
|---|--------------------|------------|----------|---|--|
| Franz Josef (Waiho River Stop Bank Protection) | 5(A) | [DATE] | [DATE] | [DATE] | up to \$18,000,000 |
| FUNDING TOTAL: up to \$18,000,000 (clause 3.1) | | | | | |

4.2 **Programme Outcomes:** the outcomes of the Programme that align with the Funding criteria include:

- (a) new employment, the preservation of jobs and the redeployment of workers in communities and within the infrastructure sector hit by COVID-19; and
- (b) investment toward a more productive, sustainable and inclusive economy, enabling our regions to grow and support a modern and connected New Zealand.

4.3 **Delivery:** The Recipient must ensure that:

- (a) the Construction Commencement Date in each Work Programme is no later than 12 months from the relevant Start Date (**Schedule 5**);
- (b) it obtains all consents required (including without limitation, statutory consents, permissions and licences) to carry out the Work Programmes in accordance with the consenting timeframes set out in Schedule 5. The Recipient will notify the Ministry immediately if any consent is not achieved, expires, is withdrawn, is breached or otherwise lapses;
- (c) its contractor(s):
 - (i) have accountability and deliver any construction contracts on time, within budget and to meet the relevant building codes and consents, as required for the Work Programmes to be undertaken; and
 - (ii) provide all necessary information to it that will allow the Recipient to promptly notify the Ministry if any material event or circumstance occurs which may be detrimental to the Work Programmes and their delivery (including any identified funding short fall or potential cost overruns);
- (d) the Work Programmes are carried out:

- (iii) promptly with due diligence, care and skill, and in a manner that meets or exceeds Best Industry Practice;
- (iv) by appropriately trained, qualified, experienced and supervised persons;
- (v) in accordance with any reasonable directions of the Ministry, notified by the Ministry in writing on recommendation of the Programme Board, from time to time;
- (vi) to the high standard set out in any Programme documentation submitted to the Ministry, including any Minister of the Crown or any Government Agency, and any further plans, designs, or other Programme documents submitted to, and approved by, the Ministry; and
- (vii) in a manner that takes into account the Construction Sector Accord's principles and guidelines.

5 PROCUREMENT

- 5.1 In delivering the Programme, the Recipient must ensure that all tendering and procurement arrangements for each Work Programme:
- (a) occur at pace, time being critical; and
 - (b) comply with any agreed Social Procurement Objectives (Schedule 3); and

6 PAYMENT TERMS

- 6.1 Subject to the terms of this Agreement, the Ministry will pay the Funding to the Recipient in accordance with the payment schedule set out in the relevant Work Programme (Schedule 5).
- 6.2 Invoicing and payment may be aggregated across all Work Programmes within the Programme.
- 6.3 **Payment preconditions:** The Ministry is not required to make any payments under this Agreement until the following conditions have been satisfied (in the Ministry's sole discretion):
- (a) The Recipient has completed all Deliverables for the Instalment claimed in the relevant Work Programme (Schedule 5);
 - (b) in relation to each Instalment (except the First Instalment), the Recipient will provide the Ministry with access to copies of the GST invoices for all payments over \$1,000 paid by the Recipient to third parties to the date of the Instalment;
 - (c) the Recipient has provided a valid GST invoice for the Instalment;
 - (d) the Recipient provides a certificate (or similar) signed by the Recipient's Programme Director which, in respect to the relevant Work Programme:
 - (i) certifies the progress of the Work Programme;
 - (ii) certifies the costs incurred by the Recipient;
 - (iii) certifies that the Work Programme is on track to be completed by the End Date;
 - (iv) notifies the Ministry of any variations to the relevant construction contract(s); and
 - (v) provides the cost to complete the Work Programme.

- (e) the Recipient has delivered all Reports required under clause 8 to the Ministry's satisfaction;
- (f) the Recipient is not in breach of any provision of this Agreement; and
- (g) the Ministry is satisfied in its sole discretion that:
 - (i) the relevant Work Programme is progressing in accordance with the relevant Work Programme Budget and Work Programme Timeframes; and
 - (ii) the Funding has been applied in accordance with clause 4, including pursuant to any discussions with the Recipient.

7 TERM

- 7.1 This Agreement commences on the date it is signed by the Parties and will continue in full force and effect until **[INSERT DATE YOU EXPECT THE PROGRAMME TO COMPLETE]** (Expiry **Date**), unless terminated earlier in accordance with its terms.
- 7.2 Each Work Programme starts on the Start Date and ends on the End Date or the date on which anything required to be done by the Recipient under a Work Programme is completed (whichever is the later), unless terminated earlier in accordance with its terms.

8 REPORTING REQUIREMENTS

- 8.1 **Reports:** The Recipient will provide the Ministry with:
 - (a) A Monthly Report by email on the final Business Day of each month (unless a Quarterly Report is due) detailing the progress of each Work Programme against the relevant Work Programme Budget and Work Programme Timeframes set out in Schedule 5;
 - (b) A Quarterly Report completed on a template attached as Schedule 2, by the 10th Business Day following the end of each quarter; and
 - (c) A Final Report within 10 Business Days of the End Date of a completed Work Programme, on the Ministry's approved form.
 - 8.2 **Ministry satisfaction:** For the avoidance of doubt, if any one or more of the Reports do not satisfy the Ministry that a Work Programme is progressing in accordance with the relevant Work Programme Budget and Work Programme Timeframe, the Ministry will be entitled to terminate the relevant Work Programme and recoup all unspent funds in accordance with clause 4 of Schedule 2.
 - 8.3 **Final Programme Report:** A Final Programme Report within 1 month following the Expiry Date in the Ministry's approved form.
 - 8.4 **Further information:** The Recipient will promptly provide all information requested by the Ministry necessary to verify the Recipient's performance under this Agreement, including (without limitation) its procurement documentation, subcontracts, financial and technical information, and records of the number and make-up of the workers hired to undertake the Programme or any Work Programme(s).
- ## 9 GOVERNANCE
- 9.1 The Recipient and the Ministry will appoint suitably qualified and experienced personnel to provide oversight of the Programme (**Programme Board**).

9.2 The Programme Board will:

- (a) provide advice about whether or not the Recipient is meeting its performance obligations under this Agreement; and
- (b) provide the Recipient with advice about any action or change recommended to meet its performance obligations;
- (c) monitor the progress of the Programme, compliance, risk identification and mitigation, and quality assurance; and
- (d) establish channels for two-way communication of information or escalation of issues between the Recipient and Ministry.

9.3 The Programme Board may make recommendations to the Ministry in respect to the Recipient's performance under this Agreement and to ensure the improvement and profitable management of the Programme against planned progress (Schedule 5).

10 **ADDRESS FOR NOTICES**

| Ministry: | Recipient: |
|---|--|
| Ministry of Business, Innovation and Employment 15 Stout Street PO Box 1473 WELLINGTON 6011 Email address: Penny.Bicknell@mbie.govt.nz Contact person: Penny Bicknell Attention: Penny Bicknell | [insert] Email address: [insert] Contact person: [insert] Attention: [insert] |

SCHEDULE 2 - FUNDING AGREEMENT STANDARD TERMS AND CONDITIONS

1. INTERPRETATION

1.1 In this Agreement, the following terms have the following meanings:

“Agreement” means this agreement, including all Schedules;

“Best Industry Practice” means that degree of skill, care and foresight and operating practice that would reasonably and ordinarily be expected of a skilled and competent supplier of services engaged in the same type of undertaking as that of the Recipient or any contractors (as applicable) under the same or similar circumstances as those contemplated by this Agreement;

“Business Day” means any day not being a Saturday or Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003;

“Commencement Date” is the date this Agreement is signed by both Parties;

“Confidential Information” includes all information and data (in any form) concerning the organisation, administration, operation, business, clients, finance, and methods of the Ministry, including any information provided by the Ministry under or in connection with this Agreement;

“Construction Commencement Date” means the date that construction works under each Work Programme must commence;

“Deliverable” means the deliverables in each Work Programme;

“End Date” means the end date of a Work Programme as set out in the relevant Work Programme;

“Expiry Date” means the expiry date of this Agreement, as described in Schedule 1;

“Final Report” means the final report, as described in Schedule 1;

“Final Programme Report” means the final programme report, as described in

Schedule 1;

“Funding” means the funding total, as described in Schedule 1;

“GST” means goods and services tax within the meaning of the Goods and Services Tax Act 1985;

“Instalment” means the payment instalments in each Work Programme;

“Intellectual Property Rights” includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity;

“Monthly Report” means the monthly report, as described in Schedule 1;

“Parties” means the Ministry and the Recipient and their respective successors and permitted assigns;

“Payment Schedule” means the payment schedule in each Work Programme;

“Programme” means the programme described in Schedule 1, which consists of the Work Programmes;

“Programme Board” means the governance board, as described in Schedule 1;

“Programme Director” means an officer of the Recipient with the authority to certify requests for payment of the Instalments described in Schedule 1;

“Programme Costs” means the total costs of the Work Programmes (in the aggregate);

“Report” means the reports described in clause 8 of Schedule 1;

“Schedule” means a schedule to this Agreement, including all Work Programmes;

“Social Procurement Objectives” means the agreed objectives described in Schedule 3;

“Start Date” means the start date of a Work Programme as set out in the relevant Work Programme;

“Total Maximum Amount Payable” has the meaning given in Schedule 1.

“Quarterly Report” means the quarterly report, as described in Schedule 1;

“Work Programme” means a work programme in Schedule 5 of this Agreement.

“Work Programme Budget” means the budget in each Work Programme;

“Work Programme Costs” means the total costs of a Work Programme;

“Work Programme Timeframe” means the work programme timeframes in each Work Programme.

- 1.2 References to clauses and Schedules are to clauses and Schedules of this Agreement and references to persons include bodies corporate, unincorporated associations or partnerships.
- 1.3 The headings in this Agreement are for convenience only and have no legal effect.
- 1.4 The singular includes the plural and vice versa.
- 1.5 “Including” and similar words do not imply any limitation.
- 1.6 References to a statute include references to that statute as amended or replaced from time to time.
- 1.7 Monetary references are references to New Zealand currency.
- 1.8 If there is any conflict of meaning between Schedule 1 and Schedule 2, Schedule 2 will prevail.

2. FUNDING

- 2.1 The Ministry must pay the Funding (up to the Total Maximum Amount Payable) in accordance with the Payment Schedule in relevant Work Programme to the Recipient, subject to the terms of this Agreement.
- 2.2 The Recipient must provide a valid GST invoice that complies with the Goods and

Services Tax Act 1985 for each Instalment. The invoice must:

- (a) be sent directly to the Ministry via email to monitorpgf@mbie.govt.nz;
- (b) be copied to the relevant Ministry contact person as set out in clause 10 of Schedule 1;
- (c) include sufficient information reasonably required to enable the Ministry to validate the claim for payment including a reference to this Agreement (under which the invoice is issued); and
- (d) be clearly and legibly marked to Ministry staff as advised by the Ministry to the Recipient from time to time.

- 2.3 The Funding is inclusive of all taxation except GST. The Ministry will be entitled to deduct any withholding tax required to be withheld by law from payments made to the Recipient and will not be required to gross-up or increase any such payments in respect of such amounts withheld.

- 2.4 The Recipient must use the Funding only to carry out the Programme in accordance with this Agreement.

- 2.5 In consideration of the Funding, the Recipient must:

- (a) progress each Work Programme to the Ministry’s satisfaction;
- (b) complete each Work Programme to the Ministry’s satisfaction by the Expiry Date;
- (c) carry out each Work Programme in accordance with:
 - (i) the best currently accepted principles and practice applicable to the field(s) of expertise relating to the Work Programme; and
 - (ii) all applicable laws, regulations, rules and professional codes of conduct or practice; and
- (d) refund any unspent Funding in respect to the relevant Work

Programme, to the Ministry within 10 Business Days of the End Date.

- 2.6 Where all of the monies received by the Recipient to carry out the Programme (including the Funding) exceeds the Programme Costs, the Recipient must refund to the Ministry the excess amount. The Recipient is not required to refund, under this clause 2.6, any amount that exceeds the Total Maximum Amount Payable.
- 2.7 The Recipient must ensure (and must procure that any contractor it uses ensures) that all agreements it enters into with contractors or any other party in connection with the Programme are on an "arm's length" basis and provides value for money. To the extent that the expenditure relates to work performed by parties not at "arm's length", that expenditure must be assessed at reasonable market value, and contain no unacceptable overhead and no element of "in group profit".

3. PROGRAMME DELIVERY AND PROGRESS

- 3.1 If:
- (a) the Ministry is not satisfied with the progress of a Work Programme;
 - (b) the Construction Commencement Date has not been met;
 - (c) the Recipient does or omits to do something, or any matter concerning the Recipient comes to the Ministry's attention, which, in the Ministry's opinion, may damage the business or reputation of the Ministry; or
 - (d) the Recipient breaches any of its obligations under this Agreement,
- the Ministry may (without limiting its other remedies):
- (e) renegotiate the relevant Work Programme(s) with the Recipient; or
 - (f) terminate the relevant Work Programme(s) immediately by notice to the Recipient, and clause 4.4, 4.5 and 4.6 will apply.

4. TERMINATION

- 4.1 The Ministry may terminate this Agreement at any time by giving at least 10 Business Days' notice to the Recipient.
- 4.2 The Ministry may terminate this Agreement immediately by giving notice to the Recipient, if the Recipient:
- (a) is in breach of any of its obligations under this Agreement and that breach is not capable of being remedied;
 - (b) fails to remedy any breach of its obligations under this Agreement within 5 Business Days of receipt of notice of the breach from the Ministry;
 - (c) does or omits to do something, or any matter concerning the Recipient comes to the Ministry's attention, which in the Ministry's opinion may cause damage to the business or reputation of the Ministry or of the Government of New Zealand;
 - (d) has given or gives any information to the Ministry which is misleading or inaccurate in any material respect; or
 - (e) becomes insolvent, bankrupt or subject to any form of insolvency action or administration.
- 4.3 Termination of this Agreement is without prejudice to the rights and obligations of the Parties accrued up to and including the date of termination.
- 4.4 On termination of this Agreement or relevant Work Programme(s), the Ministry may (without limiting any of its other rights or remedies):
- (a) require the Recipient to provide evidence of how the Funding has been spent; and/or
 - (b) require the Recipient to refund to the Ministry:
 - (i) any of the Funding that has not been spent or committed by the Recipient. For the purposes of this clause, Funding is committed where it has been

provided or promised to a third party for the purpose of carrying out the Programme and the Recipient, after using reasonable endeavours, is unable to secure a refund or release from that promise (as the case may be); or

(ii) the proportion of the Funding that equates to the uncompleted part of the relevant Work Programme, as reasonably determined by the Ministry; and/or;

(iii) if the Funding has been misused, or misappropriated, by the Recipient, require the Recipient to refund all Funding paid up to the date of termination, together with interest at the rate of 10% per annum from the date the Recipient was paid the money to the date the Recipient returns the money.

5. REPORTING REQUIREMENTS AND AUDIT

5.1 The Recipient must report on the progress of the Programme to the Ministry:

- (a) as set out in Schedule 1;
- (b) as otherwise reasonably required by the Ministry; and
- (c) in any format and on any medium reasonably required by the Ministry.

5.2 The Recipient must:

- (a) maintain true and accurate records in connection with the use of the Funding and the carrying out of the Programme sufficient to enable the Ministry to meet its obligations under the Public Finance Act 1989 and retain such records for at least 7 years after termination or expiry of this Agreement;
- (b) permit the Ministry, at the Ministry's expense, to inspect or

audit (using an auditor nominated by the Ministry), from time to time until 7 years after termination or expiry of this Agreement, all records relevant to this Agreement;

(c) allow the Ministry reasonable access to the Recipient's premises or other premises where any of the works are being carried out;

(d) appoint a reputable firm of chartered accountants as auditors to audit its financial statements in relation to the use of the Funding;

6. WARRANTIES

6.1 Each Party warrants to the other Party that it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with this Agreement's terms.

6.2 The Recipient warrants that:

(a) it is not insolvent or bankrupt and no action has been taken to initiate any form of insolvency administration in relation to the Recipient;

(b) all information provided by it to the Ministry in connection with this Agreement was, at the time it was provided, true, complete and accurate in all material respects; and

(c) it is not aware of any material information that has not been disclosed to the Ministry which may, if disclosed, materially adversely affect the decision of the Ministry whether to provide the Funding.

6.3 The Recipient acknowledges that the Ministry has entered into this Agreement in reliance on these warranties.

6.4 The Recipient acknowledges and agrees that the Ministry has made no warranty or representation that any funding or financial support is or will be available to the Recipient in respect of the Programme other than the Funding.

7. INTELLECTUAL PROPERTY

- 7.1 All Intellectual Property Rights in the reports provided under clause 8, Schedule 1 will be owned by the Ministry from the date the reports are created or developed.
- 7.2 All intellectual property produced by the Recipient or its employees or contractors in relation to the Programme is, on creation, jointly owned by the Ministry and the Recipient. Each Party may use (which includes modifying, developing, assigning, or licensing) such intellectual property without obtaining the prior consent of the other Party. On request, the Recipient must provide to the Ministry such intellectual property in any format, and on any medium, reasonably requested by the Ministry.
- 7.3 The Recipient must ensure that material created or developed in connection with the Programme does not infringe the Intellectual Property Rights of any person.

8. CONFIDENTIALITY

- 8.1 The Recipient must:
- (a) keep the Confidential Information confidential at all times;
 - (b) not disclose any Confidential Information to any person other than its employees or contractors to whom disclosure is necessary for purposes of the Programme or this Agreement;
 - (c) effect and maintain adequate security measures to safeguard the Confidential Information from access or use by unauthorised persons; and
 - (d) ensure that any employees or contractors to whom it discloses the Confidential Information are aware of, and comply with, the provisions of this clause 8.
- 8.2 The obligations of confidentiality in clause 8.1 do not apply to any disclosure of Confidential Information:
- (a) to the extent that such disclosure is necessary for the purposes of completing the Programme;
 - (b) required by law; or
 - (c) where the information has become public other than through a breach of the obligation of confidentiality in this clause 8 by the Recipient, or its employees or contractors, or was disclosed to a Party on a non-confidential basis by a third party.
- 8.3 The Recipient must obtain the Ministry's prior written agreement over the form and content of any public statement made by the Recipient relating to this Agreement, the Funding, or the Programme.

9. LIABILITY AND INSURANCE

- 9.1 The Recipient must effect and maintain insurance that is adequate to cover its obligations under this Agreement. The Recipient must, on request, provide the Ministry with evidence of its insurance cover required under this clause.
- 9.2 The Ministry is not liable for any loss of profit, loss of revenue or other indirect, consequential or incidental loss or damage arising under or in connection with this Agreement.
- 9.3 The maximum liability of the Ministry under or in connection with this Agreement whether arising in contract, tort (including negligence) or otherwise is the total amount which would be payable under this Agreement if the Programme had been carried out in accordance with this Agreement.
- 9.4 The Recipient (including its employees, agents, and contractors, if any) is not an employee, agent or partner of the Ministry or of the Chief Executive of the Ministry. At no time will the Ministry have any liability to meet any of the Recipient's obligations under the Health and Safety at Work Act 2015 or to pay to the Recipient:
- (a) holiday pay, sick pay or any other payment under the Holidays Act 2003; or
 - (b) redundancy or any other form of severance pay; or
 - (c) taxes or levies, including any levies under the Accident Compensation Act 2001.
- 9.5 The Recipient indemnifies the Ministry against any claim, liability, loss or expense (including legal fees on a solicitor own

client basis) (“loss”) brought or threatened against, or incurred by the Ministry, arising from or in connection with a breach of this Agreement by the Recipient or the Programme, or from the negligence or wilful misconduct of the Recipient, its employees or contractors.

9.6 Where the Recipient is a trustee, the Ministry acknowledges that the Recipient has entered into this Agreement as a trustee of the trust named in Schedule 1 in an independent capacity without any interest in any of the assets of the trust other than as trustee. Except where the Recipient acts fraudulently, the Recipient is liable under this Agreement only to the extent of the value of the assets of the trust available to meet the Recipient’s liability, plus any amount by which the value of those assets has been diminished by any breach of trust caused by the Recipient’s wilful default or dishonesty.

9.7 The Recipient must effect and maintain for the term of this Agreement:

- (a) adequate insurance to cover standard commercial risks; and
- (b) other insurance reasonably required by the Ministry.

The Recipient must, upon request by the Ministry, provide the Ministry with evidence of its compliance with this clause.

10. DISPUTE RESOLUTION

10.1 The Parties will attempt to resolve any dispute or difference that may arise under or in connection with this Agreement amicably and in good faith, referring the dispute to the Parties’ senior managers for resolution if necessary.

10.2 If the Parties’ senior managers are unable to resolve the dispute within 10 Business Days of it being referred to them, the Parties will refer the dispute to mediation or another form of alternative dispute resolution agreed between the Parties.

10.3 If a dispute is referred to mediation, the mediation will be conducted by a single mediator appointed by the Parties (or if they cannot agree, appointed by the Chair

of the Resolution Institute of New Zealand) and on the terms of the Resolution Institute’s standard mediation agreement (unless the Parties agree otherwise). The Parties will pay their own costs relating to any mediation or other form of alternative dispute resolution (unless they agree otherwise).

10.4 The Parties must continue to perform their obligations under this Agreement as far as possible as if no dispute had arisen pending final resolution of the dispute.

10.5 Nothing in this clause 10 precludes either Party from taking immediate steps to seek urgent relief before a New Zealand Court.

11. FORCE MAJEURE

11.1 Neither Party will be liable to the other for any failure to perform its obligations under this Agreement by reason of any cause or circumstance beyond the Party’s reasonable control including, acts of God, communication line failures, power failures, riots, strikes, lock-outs, labour disputes, fires, war, flood, earthquake or other disaster, or governmental action after the date of this Agreement (“Force Majeure Event”). The Party affected must:

- (a) notify the other Party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event including an estimate of the time likely to be required to overcome it;
- (b) use its best endeavours to overcome the Force Majeure Event; and
- (c) continue to perform its obligations as far as practicable.

12. GENERAL

12.1 A waiver by either Party of any rights arising from any breach of any term of this Agreement will not be a continuing waiver of any other rights arising from any other breaches of the same or other terms or conditions of this Agreement. No failure or delay on the part of either Party in the exercise of any right or remedy in this Agreement will operate as a waiver. No single or partial exercise of any such right

or remedy will preclude any other or further exercise of that or any other right or remedy.

12.2 Assignment:

(a) The Recipient must not assign, delegate, subcontract or transfer any or all of its rights and obligations under this Agreement. The Recipient remains liable for performance of its obligations under this Agreement despite any approved subcontracting or assignment.

(b) If the Recipient is a company, any transfer of shares, or other arrangement affecting the Recipient or its holding company which results in a change in the effective control of the Recipient is deemed to be an assignment subject to clause 12.2(a).

12.3 This Agreement may only be varied by agreement in writing signed by the Parties.

12.4 If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of the Agreement will be binding on the Parties.

12.5 Any notice to be given under this Agreement must be in writing and hand delivered or sent by email or registered post to the Parties' respective email address, postal address as set out in Schedule 1. A notice is deemed to be received:

(a) if personally delivered when delivered; or

(b) if posted, three Business Days after posting;

(c) if sent by email, at the time the email enters the Recipient's information system as evidenced by a delivery receipt requested by the sender and it is not returned undelivered or as an error,

provided that any notice received after 5pm or on a day which is not a Business Day shall

be deemed not to have been received until the next Business Day.

12.6 This Agreement sets out the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter.

12.7 The provisions of this Agreement relating to termination (clause 4), reporting requirements and audit (clause 5), warranties (clause 6), intellectual property (clause 7), confidentiality (clause 8), and liability and insurance (clause 9) will continue after the expiry or termination of this Agreement.

12.8 This Agreement may be signed in any number of counterparts (including emailed copies) and provided that each Party has signed a counterpart, the counterparts, when taken together, will constitute a binding and enforceable agreement between the Parties.

12.9 This Agreement will be governed by and construed in accordance with the laws of New Zealand.

SCHEDULE 3 – SOCIAL PROCUREMENT OUTCOMES

| Outcome | Measure | When Applied |
|--------------------------------|---|--|
| Employment of targeted workers | Prioritising workers identifying as: <ol style="list-style-type: none"> 1. Māori or Pasifika 2. local workers 3. With the employment of women prioritised at each level where possible. | All |
| Local Businesses | [X]% of the direct contracts and sub-contracts will be awarded to businesses owned and operated by people who reside in the region operating in the region (targeting Māori and Pasifika businesses in particular) | All % to be mutually agreed |
| Supplier Diversity | [X]% of the direct contracts and sub-contracts will be awarded to Māori and Pasifika businesses | Surge Regions and Waikato % to be mutually agreed |
| Skills and training | Training should include, but not be limited to: <ul style="list-style-type: none"> • financial literacy and budgeting • health & safety • people management & development • marketing | Work Programmes over 6 months in duration |
| | <p>A career development plan created within 3 months of a contract being awarded.</p> <p>Internal assessments of all employees' career development plan will be carried out at least once a month and at the end of the contracted works to ensure each employee's career development is progressing.</p> <p>A focus should be individuals obtaining those skills sets and training that will not just benefit them in their current role, but has the ability to keep individuals connected nationally (e.g. traffic management). These should be through an accredited training provider so units are reported correctly on NZQA.</p> <p>Development Plans should include, but not be limited to:</p> <ul style="list-style-type: none"> • individuals' aims and goals • plan to meet aims and goals (if realistic) • clearly identifying needs for skills, knowledge or competence • selecting appropriate development activities • recording of training/development opportunities undertaken • formal recognition/certification of training (e.g. health & safety), and • other roles undertaken. | Work Programmes over 6 months in duration |
| Worker Conditions | 100% of employees will be registered with a suitably qualified health and safety testing organisation including mental health and wellness. | All |

| | | |
|------------------------------|---|---|
| | Employees' wages will increase progressively in line with their career development plan achievements. | Work Programmes over 6 months in duration |
| Environmental Responsibility | <p>Adoption of practises that enable the Work Programme(s) to be delivered sustainably, including by:</p> <ul style="list-style-type: none"> • protecting or enhancing the local ecosystem and its indigenous biodiversity • actively seeking to minimise the carbon impact of the Programme delivery, to support the transition to a net zero emissions economy • minimising waste, re-using materials, and where possible incorporating the principles of the circular economy • using water resources efficiently • using low-impact, sustainably and locally sourced materials and products; and • including resilience to the impacts of a changing climate. | All |

DRAFT

SCHEDULE 4 – REPORT TEMPLATE

QUARTERLY REPORT TEMPLATE



WEST COAST REGIONAL COUNCIL (FRANZ JOSEF) CLMATE RESILIENCE PROGRAMME

| | |
|----------------------|---|
| Location and Region: | West Coast, South Island, New Zealand |
| Contracted Amount: | Up to \$18,000,000 |
| Report Date: | For the month ending [insert month OR quarter] |

1. Programme Updates

Provide description and analysis of actual against planned progress of each Work Programme to show that the activity is occurring at pace.

| Work Programme | Schedule Reference | Details of progress |
|--|--------------------|---------------------|
| Franz Josef (Waiho River Stop Bank Protection) | 5(A) | |

2. Redeployment Outcomes

2.1 Complete the following table for the number of people working to deliver each Work Programme in the current reporting period.

| Work Programme | Schedule Reference | Total People Working | No. previously unemployed | No. local | No. aged 15-24 | No. Māori | No. Pasifika | No. Women | Job type* |
|--|--------------------|----------------------|---------------------------|-----------|----------------|-----------|--------------|-----------|-----------|
| Franz Josef (Waiho River Stop Bank Protection) | 5(A) | | | | | | | | |

*Full-time/Part-Time/Contractor/Consultant

2.2 Complete the following total jobs table, showing total current, past and expected future jobs

| Current jobs (this should be the Total People Working in the table above) | People previously but no longer employed on each Work Programme | Expected jobs in the future |
|---|---|-----------------------------|
| | | |
| | | |
| | | |
| | | |

2.3 Provide any additional narrative to explain the tables 2.1 and 2.2 above, including other relevant information

3. Supplier Diversity Outcomes

Complete the following table for the number and value of each direct or sub-contract awarded to local, Māori and/or Pasifika-owned businesses during the current reporting period.

| Name of business | Business type (Māori, Pasifika, local) | Contract type (direct, sub-contract) | Contract purpose (briefly describe) | Length of contract (months) | Total value of contract (\$) | No. new employees (as a result of contract) |
|------------------|--|--------------------------------------|-------------------------------------|-----------------------------|------------------------------|---|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

4. Social Procurement Objectives

In an Appendix (please attach) and in the format that best works for you:

- Show achievements to date against the Social Procurement Objectives in a table or other useful format.
- Provide additional narrative to show how tendering, procurement, employment and/or training arrangements are helping to achieve the Social Procurement Objectives, identifying any limitations or further support needed.

5. Financials

Give a summary of funding received and expenditure to date, actual against budgeted, for each **Work Programme** in the Table below or an Appendix (please attach).

| Work Programme | Schedule Reference | Indicative Cost | Actual Spend | PGF funds (yes/no) | Note |
|--|---------------------------|------------------------|---------------------|---------------------------|-------------|
| Franz Josef (Waiho River Stop Bank Protection) | 5(A) | | | | |

6. Forward Work Programme

Outline forward work to be completed in the next month

| Key Milestone | Indicative Timeframe | Outline of Planned Work (for next month) |
|----------------------|-----------------------------|---|
| | | |
| | | |
| | | |
| | | |

7. Risks/Issues/Opportunities

Outline any risks and/or issues arising or expected to arise, costs and mitigation

| Risks / Issues | Magnitude/Likelihood | Mitigation |
|-----------------------|-----------------------------|-------------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

8. Communications

Provide an update on media, marketing and communications activity for this Programme

| |
|--|
| |
|--|

9. Any other information

DRAFT

**SCHEDULE 5
WORK PROGRAMMES**

SCHEDULE REFERENCE: "WORK PROGRAMME 5(A)"

1 **WORK PROGRAMME SUMMARY**

| | |
|---|--|
| WORK PROGRAMME NAME | FRANZ JOSEF (WAIHO RIVER STOP BANK PROTECTION) (5A) |
| PDU ID | R07.02920 |
| LOCATION | [DESCRIBE LOCATION] |
| WORK PROGRAMME COST, PLUS GST (IF ANY) | UP TO \$18,000,000 |
| START DATE | THE START DATE FOR ALL PROGRAMMES IS THE DATE THIS AGREEMENT IS SIGNED BY BOTH PARTIES |

2 **WORK PROGRAMME DELIVERABLES**

| Completion Date | Deliverable | Instalment payable on completion of Deliverable plus GST (if any) |
|--|---|--|
| Commencement Date | This Agreement executed by both Parties. | up to \$[10 %] |
| [DATE] [to be somewhere between commencement date and construction commencement date. Refer Schedule 1 Clause 4.3(b)] | All consents required have been obtained. [+ list of other Deliverables if needed] | up to \$[40 %] |
| [DATE] [to be within 12 months of Commencement Date – refer Schedule 1 Clause 4.3(a)] | Construction Commencement Date. [+ list of other Deliverables if needed] | up to \$[15%] [could be more or less % depending on number of deliverables lines per project – just |

| | | |
|--|---|--|
| | | <i>ensure final adds up to 100%</i> |
| [DATE] | [INSERT] <i>[insert list of Deliverables]</i> | up to \$ [15%] <i>[as above]</i> |
| [DATE] | [INSERT this row or more if required] <i>[insert list of Deliverables]</i> | up to \$ [15%] <i>[the above must add up to 90%]</i> |
| [DATE] <i>[End Date as set out in Schedule 1 Clause 4.1.]</i> <i>[Final Report to be within 10 Business Days of End Date - Schedule 1 Clause 8.1]</i> | End Date: Work Programme finished; and Final Work Programme Report received by the Ministry. | [this stays at] [10%] \$1,800,000 |
| Total Work Programme Costs | | UP TO \$18,000,000 |

3

WORK PROGRAMME BUDGET

| ITEM | INDICATIVE COST (\$) |
|---|----------------------|
| Preliminaries | |
| Work Programme Management, Design, Environmental, Property | |
| Work Programme management | |
| Design & consultants support | |
| Environmental costs | |
| Property costs | |
| Material Procurement | |
| Main Construction Contract | |

| | |
|-----------------------------------|--|
| Contractor preliminary & general | |
| Civil works / site works | |
| Construct buildings | |
| [XXXX] | |
| Subtotal | |
| Contingency | |
| [XXXX] | |
| Total Work Programme Costs | |

4 WORK PROGRAMME TIMEFRAME

| KEY MILESTONE | INDICATIVE TIMEFRAME |
|--|----------------------|
| Plan and design | |
| Award detailed design contract (Start Date) | [XX DATE] |
| Award procurement contract | [XX DATE] |
| Obtain all consents | [XX DATE] |
| Obtain all property rights | [XX DATE] |
| Construction | |
| Award construction contract | [XX DATE] |
| Construction commences (Construction Commencement Date) | [XX DATE] |
| Construction complete | [XX DATE] |
| Work Programme Close | |
| Opening event (End Date) | [XX DATE] |

**INFRASTRUCTURE REFERENCE GROUP
 PROGRAMME OF FLOODPLAIN RISK MANAGEMENT
 FUNDING AGREEMENT
 FOR**

**WEST COAST REGIONAL COUNCIL
 CLIMATE RESILIENCE PROGRAMME**

BETWEEN The Sovereign in Right of New Zealand acting by and through the Chief Executive of the Ministry of Business, Innovation and Employment (“**Ministry**”)

AND West Coast Regional Council listed in Part 1 of Schedule 2 to the Local Government Act 2002, with offices at [main address] (“**Recipient**”)

BACKGROUND

The Ministry wishes to contribute to the Programme by providing Funding from the appropriation set out in Schedule 1 (Details) on the terms set out in this Agreement.

AGREEMENT

The Ministry will pay the Funding to the Recipient, and the Recipient accepts the Funding, on the terms and conditions set out in Schedule 1 (Details), Schedule 2 (Funding Agreement Standard Terms and Conditions), Schedule 3 (Social Procurement Outcomes), Schedule 4 (Report Template) and Schedule 5 (Work Programmes).

SIGNED by the **SOVEREIGN IN RIGHT
 OF NEW ZEALAND** acting by and
 through the Chief Executive of the
 Ministry of Business, Innovation and
 Employment or their authorised
 delegate:)

 [INSERT NAME]

 [INSERT POSITION]

 Date

SIGNED for and on behalf of [PARTY])
 by its authorised signatory:)

 Signature

 Full Name

 Position

 Date

SCHEDULE 1 - DETAILS

1 CONTEXT

- 1.1 In Budget 2020, Cabinet agreed to provide a \$3 billion investment in infrastructure to support New Zealand's economic recovery as part of the 11 May COVID-19 Response and Recovery Fund [CAB-20-MIN-0219.04 refers].
- 1.2 The Government established the Infrastructure Reference Group (**IRG**) to identify a pipeline of shovel-ready projects to support the economy during the COVID-19 rebuild. The process was supported by Crown Infrastructure Partners.
- 1.3 On 24 June 2020, the Cabinet Economic Development Committee, agreed that the Ministry (acting through the Provincial Development Unit) would be responsible for delivering projects approved by IRG Ministers where they are best placed to do so [CAB-20-MIN-0341 refers].

2 APPROPRIATION AND APPROVAL PROCESS

- 2.1 Funding is from a Non-departmental Other Expenses Supporting Infrastructure Appropriation, Vote Business, Science and Innovation authorised by Cabinet on 20 July 2020 [CAB-20-MIN-0341 refers].

3 FUNDING

- 3.1 **Funding Total:** this Agreement provides funding for a total amount of **up to \$6,075,000** (plus GST, if any) (**Funding**). This is the Total Maximum Amount Payable by the Ministry.
- 3.2 Subject to the terms of this Agreement, the Ministry will pay the Funding in accordance with the payment schedule set out in the relevant Work Programme (Schedule 5).
- 3.3 **Application of Funding:** The Recipient:
- (a) must apply the Funding in accordance with the relevant Work Programme (Schedule 5), subject to any variation agreed with the Ministry in writing;
 - (b) will use its best endeavours to deliver each Work Programme in the manner set out in the relevant Work Programme; and
 - (c) must not use the Funding for any part of a Work Programme that is or was already funded by any party (including the Recipient, unless otherwise approved by the Ministry in writing), or in relation to any activity which the Ministry advises the Recipient that it may not apply the Funding to.
- 3.4 **Overruns:** The Parties acknowledge that the Funding in clause 3.1 is the Total Maximum Amount Payable by the Ministry for the Programme (in the aggregate), and that the Recipient will be liable for all cost overruns in relation to the delivery of the Programme. The Ministry will not be liable for any cost overruns. The Recipient will carefully monitor the likelihood of cost overruns through its budgeting and reporting process, and will notify the Ministry as soon as it is aware that there is a likelihood that Programme Costs will exceed the Total Maximum Amount Payable under this Agreement.

4 PROGRAMME

- 4.1 **Programme:** The Recipient will use the Funding to deliver a floodplain risk management programme of works, the West Coast Regional Council Climate Resilience Programme

(Programme). The Programme comprises the following Work Programmes, as set out in Schedule 5:

| Work Programme | Schedule Reference | Start Date | End Date | Construction Commencement Date (by no later than 12 months from the Start Date) | Work Programme Cost, plus GST (if any) |
|---|--------------------|------------|----------|---|--|
| 1. Hokitika Flood and Coastal Erosion Protection | 5(A) | [DATE] | [DATE] | [DATE] | up to \$3,750,000 |
| 2. Mawhera Quay Flood Protection Wall Upgrade (Stage 2) | 5(B) | [DATE] | [DATE] | [DATE] | up to \$1,950,000 |
| 3. Westport (Buller River) Flood warning system | 5(C) | [DATE] | [DATE] | [DATE] | up to \$375,000 |
| FUNDING TOTAL: up to \$6,075,000 (clause 3.1) | | | | | |

4.2 **Programme Outcomes:** the outcomes of the Programme that align with the Funding criteria include:

- (a) new employment, the preservation of jobs and the redeployment of workers in communities and within the infrastructure sector hit by COVID-19; and
- (b) investment toward a more productive, sustainable and inclusive economy, enabling our regions to grow and support a modern and connected New Zealand.

4.3 **Delivery:** The Recipient must ensure that:

- (a) the Construction Commencement Date in each Work Programme is no later than 12 months from the relevant Start Date (**Schedule 5**);
- (b) it obtains all consents required (including without limitation, statutory consents, permissions and licences) to carry out the Work Programmes in accordance with the consenting timeframes set out in Schedule 5. The Recipient will notify the Ministry immediately if any consent is not achieved, expires, is withdrawn, is breached or otherwise lapses;

- (c) its contractor(s):
 - (i) have accountability and deliver any construction contracts on time, within budget and to meet the relevant building codes and consents, as required for the Work Programmes to be undertaken; and
 - (ii) provide all necessary information to it that will allow the Recipient to promptly notify the Ministry if any material event or circumstance occurs which may be detrimental to the Work Programmes and their delivery (including any identified funding short fall or potential cost overruns);
- (d) the Work Programmes are carried out:
 - (iii) promptly with due diligence, care and skill, and in a manner that meets or exceeds Best Industry Practice;
 - (iv) by appropriately trained, qualified, experienced and supervised persons;
 - (v) in accordance with any reasonable directions of the Ministry, notified by the Ministry in writing on recommendation of the Programme Board, from time to time;
 - (vi) to the high standard set out in any Programme documentation submitted to the Ministry, including any Minister of the Crown or any Government Agency, and any further plans, designs, or other Programme documents submitted to, and approved by, the Ministry; and
 - (vii) in a manner that takes into account the Construction Sector Accord's principles and guidelines.

5 PROCUREMENT

- 5.1 In delivering the Programme, the Recipient must ensure that all tendering and procurement arrangements for each Work Programme:
- (a) occur at pace, time being critical; and
 - (b) comply with any agreed Social Procurement Objectives (Schedule 3); and

6 PAYMENT TERMS

- 6.1 Subject to the terms of this Agreement, the Ministry will pay the Funding to the Recipient in accordance with the payment schedule set out in the relevant Work Programme (Schedule 5).
- 6.2 Invoicing and payment may be aggregated across all Work Programmes within the Programme.
- 6.3 **Payment preconditions:** The Ministry is not required to make any payments under this Agreement until the following conditions have been satisfied (in the Ministry's sole discretion):
- (a) The Recipient has completed all Deliverables for the Instalment claimed in the relevant Work Programme (Schedule 5);
 - (b) in relation to each Instalment (except the First Instalment), the Recipient will provide the Ministry with access to copies of the GST invoices for all payments over \$1,000 paid by the Recipient to third parties to the date of the Instalment;
 - (c) the Recipient has provided a valid GST invoice for the Instalment;

- (d) the Recipient provides a certificate (or similar) signed by the Recipient's Programme Director which, in respect to the relevant Work Programme:
 - (i) certifies the progress of the Work Programme;
 - (ii) certifies the costs incurred by the Recipient;
 - (iii) certifies that the Work Programme is on track to be completed by the End Date;
 - (iv) notifies the Ministry of any variations to the relevant construction contract(s); and
 - (v) provides the cost to complete the Work Programme.
- (e) the Recipient has delivered all Reports required under clause 8 to the Ministry's satisfaction;
- (f) the Recipient is not in breach of any provision of this Agreement; and
- (g) the Ministry is satisfied in its sole discretion that:
 - (i) the relevant Work Programme is progressing in accordance with the relevant Work Programme Budget and Work Programme Timeframes; and
 - (ii) the Funding has been applied in accordance with clause 4, including pursuant to any discussions with the Recipient.

7 TERM

- 7.1 This Agreement commences on the date it is signed by the Parties and will continue in full force and effect until [INSERT DATE YOU EXPECT THE PROGRAMME TO COMPLETE] (Expiry **Date**), unless terminated earlier in accordance with its terms.
- 7.2 Each Work Programme starts on the Start Date and ends on the End Date or the date on which anything required to be done by the Recipient under a Work Programme is completed (whichever is the later), unless terminated earlier in accordance with its terms.

8 REPORTING REQUIREMENTS

- 8.1 **Reports:** The Recipient will provide the Ministry with:
 - (a) A Monthly Report by email on the final Business Day of each month (unless a Quarterly Report is due) detailing the progress of each Work Programme against the relevant Work Programme Budget and Work Programme Timeframes set out in Schedule 5;
 - (b) A Quarterly Report completed on a template attached as Schedule 2, by the 10th Business Day following the end of each quarter; and
 - (c) A Final Report within 10 Business Days of the End Date of a completed Work Programme, on the Ministry's approved form.
- 8.2 **Ministry satisfaction:** For the avoidance of doubt, if any one or more of the Reports do not satisfy the Ministry that a Work Programme is progressing in accordance with the relevant Work Programme Budget and Work Programme Timeframe, the Ministry will be entitled to terminate the relevant Work Programme and recoup all unspent funds in accordance with clause 4 of Schedule 2.
- 8.3 **Final Programme Report:** A Final Programme Report within 1 month following the Expiry Date in the Ministry's approved form.

8.4 **Further information:** The Recipient will promptly provide all information requested by the Ministry necessary to verify the Recipient's performance under this Agreement, including (without limitation) its procurement documentation, subcontracts, financial and technical information, and records of the number and make-up of the workers hired to undertake the Programme or any Work Programme(s).

9 GOVERNANCE

9.1 The Recipient and the Ministry will appoint suitably qualified and experienced personnel to provide oversight of the Programme (**Programme Board**).

9.2 The Programme Board will:

- (a) provide advice about whether or not the Recipient is meeting its performance obligations under this Agreement; and
- (b) provide the Recipient with advice about any action or change recommended to meet its performance obligations;
- (c) monitor the progress of the Programme, compliance, risk identification and mitigation, and quality assurance; and
- (d) establish channels for two-way communication of information or escalation of issues between the Recipient and Ministry.

9.3 The Programme Board may make recommendations to the Ministry in respect to the Recipient's performance under this Agreement and to ensure the improvement and profitable management of the Programme against planned progress (Schedule 5).

10 ADDRESS FOR NOTICES

| Ministry: | Recipient: |
|---|--|
| Ministry of Business, Innovation and Employment 15 Stout Street PO Box 1473 WELLINGTON 6011 Email address: penny.bicknell@mbie.govt.nz Contact person: Penny Bicknell Attention: Penny Bicknell | [insert] Email address: [insert] Contact person: [insert] Attention: [insert] |

SCHEDULE 2 - FUNDING AGREEMENT STANDARD TERMS AND CONDITIONS

1. INTERPRETATION

1.1 In this Agreement, the following terms have the following meanings:

“Agreement” means this agreement, including all Schedules;

“Best Industry Practice” means that degree of skill, care and foresight and operating practice that would reasonably and ordinarily be expected of a skilled and competent supplier of services engaged in the same type of undertaking as that of the Recipient or any contractors (as applicable) under the same or similar circumstances as those contemplated by this Agreement;

“Business Day” means any day not being a Saturday or Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003;

“Commencement Date” is the date this Agreement is signed by both Parties;

“Confidential Information” includes all information and data (in any form) concerning the organisation, administration, operation, business, clients, finance, and methods of the Ministry, including any information provided by the Ministry under or in connection with this Agreement;

“Construction Commencement Date” means the date that construction works under each Work Programme must commence;

“Deliverable” means the deliverables in each Work Programme;

“End Date” means the end date of a Work Programme as set out in the relevant Work Programme;

“Expiry Date” means the expiry date of this Agreement, as described in Schedule 1;

“Final Report” means the final report, as described in Schedule 1;

“Final Programme Report” means the final programme report, as described in

Schedule 1;

“Funding” means the funding total, as described in Schedule 1;

“GST” means goods and services tax within the meaning of the Goods and Services Tax Act 1985;

“Instalment” means the payment instalments in each Work Programme;

“Intellectual Property Rights” includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity;

“Monthly Report” means the monthly report, as described in Schedule 1;

“Parties” means the Ministry and the Recipient and their respective successors and permitted assigns;

“Payment Schedule” means the payment schedule in each Work Programme;

“Programme” means the programme described in Schedule 1, which consists of the Work Programmes;

“Programme Board” means the governance board, as described in Schedule 1;

“Programme Director” means an officer of the Recipient with the authority to certify requests for payment of the Instalments described in Schedule 1;

“Programme Costs” means the total costs of the Work Programmes (in the aggregate);

“Report” means the reports described in clause 8 of Schedule 1;

“Schedule” means a schedule to this Agreement, including all Work Programmes;

“Social Procurement Objectives” means the agreed objectives described in Schedule 3;

“Start Date” means the start date of a Work Programme as set out in the relevant Work Programme;

“Total Maximum Amount Payable” has the meaning given in Schedule 1.

“Quarterly Report” means the quarterly report, as described in Schedule 1;

“Work Programme” means a work programme in Schedule 5 of this Agreement.

“Work Programme Budget” means the budget in each Work Programme;

“Work Programme Costs” means the total costs of a Work Programme;

“Work Programme Timeframe” means the work programme timeframes in each Work Programme.

- 1.2 References to clauses and Schedules are to clauses and Schedules of this Agreement and references to persons include bodies corporate, unincorporated associations or partnerships.
- 1.3 The headings in this Agreement are for convenience only and have no legal effect.
- 1.4 The singular includes the plural and vice versa.
- 1.5 “Including” and similar words do not imply any limitation.
- 1.6 References to a statute include references to that statute as amended or replaced from time to time.
- 1.7 Monetary references are references to New Zealand currency.
- 1.8 If there is any conflict of meaning between Schedule 1 and Schedule 2, Schedule 2 will prevail.

2. FUNDING

- 2.1 The Ministry must pay the Funding (up to the Total Maximum Amount Payable) in accordance with the Payment Schedule in relevant Work Programme to the Recipient, subject to the terms of this Agreement.
- 2.2 The Recipient must provide a valid GST invoice that complies with the Goods and

Services Tax Act 1985 for each Instalment. The invoice must:

- (a) be sent directly to the Ministry via email to monitorpgf@mbie.govt.nz;
- (b) be copied to the relevant Ministry contact person as set out in clause 10 of Schedule 1;
- (c) include sufficient information reasonably required to enable the Ministry to validate the claim for payment including a reference to this Agreement (under which the invoice is issued); and
- (d) be clearly and legibly marked to Ministry staff as advised by the Ministry to the Recipient from time to time.

- 2.3 The Funding is inclusive of all taxation except GST. The Ministry will be entitled to deduct any withholding tax required to be withheld by law from payments made to the Recipient and will not be required to gross-up or increase any such payments in respect of such amounts withheld.

- 2.4 The Recipient must use the Funding only to carry out the Programme in accordance with this Agreement.

- 2.5 In consideration of the Funding, the Recipient must:

- (a) progress each Work Programme to the Ministry’s satisfaction;
- (b) complete each Work Programme to the Ministry’s satisfaction by the Expiry Date;
- (c) carry out each Work Programme in accordance with:
 - (i) the best currently accepted principles and practice applicable to the field(s) of expertise relating to the Work Programme; and
 - (ii) all applicable laws, regulations, rules and professional codes of conduct or practice; and
- (d) refund any unspent Funding in respect to the relevant Work

Programme, to the Ministry within 10 Business Days of the End Date.

- 2.6 Where all of the monies received by the Recipient to carry out the Programme (including the Funding) exceeds the Programme Costs, the Recipient must refund to the Ministry the excess amount. The Recipient is not required to refund, under this clause 2.6, any amount that exceeds the Total Maximum Amount Payable.
- 2.7 The Recipient must ensure (and must procure that any contractor it uses ensures) that all agreements it enters into with contractors or any other party in connection with the Programme are on an “arm’s length” basis and provides value for money. To the extent that the expenditure relates to work performed by parties not at “arm’s length”, that expenditure must be assessed at reasonable market value, and contain no unacceptable overhead and no element of “in group profit”.

3. PROGRAMME DELIVERY AND PROGRESS

- 3.1 If:
- (a) the Ministry is not satisfied with the progress of a Work Programme;
 - (b) the Construction Commencement Date has not been met;
 - (c) the Recipient does or omits to do something, or any matter concerning the Recipient comes to the Ministry’s attention, which, in the Ministry’s opinion, may damage the business or reputation of the Ministry; or
 - (d) the Recipient breaches any of its obligations under this Agreement,
- the Ministry may (without limiting its other remedies):
- (e) renegotiate the relevant Work Programme(s) with the Recipient; or
 - (f) terminate the relevant Work Programme(s) immediately by notice to the Recipient, and clause 4.4, 4.5 and 4.6 will apply.

4. TERMINATION

- 4.1 The Ministry may terminate this Agreement at any time by giving at least 10 Business Days’ notice to the Recipient.
- 4.2 The Ministry may terminate this Agreement immediately by giving notice to the Recipient, if the Recipient:
- (a) is in breach of any of its obligations under this Agreement and that breach is not capable of being remedied;
 - (b) fails to remedy any breach of its obligations under this Agreement within 5 Business Days of receipt of notice of the breach from the Ministry;
 - (c) does or omits to do something, or any matter concerning the Recipient comes to the Ministry’s attention, which in the Ministry’s opinion may cause damage to the business or reputation of the Ministry or of the Government of New Zealand;
 - (d) has given or gives any information to the Ministry which is misleading or inaccurate in any material respect; or
 - (e) becomes insolvent, bankrupt or subject to any form of insolvency action or administration.
- 4.3 Termination of this Agreement is without prejudice to the rights and obligations of the Parties accrued up to and including the date of termination.
- 4.4 On termination of this Agreement or relevant Work Programme(s), the Ministry may (without limiting any of its other rights or remedies):
- (a) require the Recipient to provide evidence of how the Funding has been spent; and/or
 - (b) require the Recipient to refund to the Ministry:
 - (i) any of the Funding that has not been spent or committed by the Recipient. For the purposes of this clause, Funding is committed where it has been

provided or promised to a third party for the purpose of carrying out the Programme and the Recipient, after using reasonable endeavours, is unable to secure a refund or release from that promise (as the case may be); or

(ii) the proportion of the Funding that equates to the uncompleted part of the relevant Work Programme, as reasonably determined by the Ministry; and/or;

(iii) if the Funding has been misused, or misappropriated, by the Recipient, require the Recipient to refund all Funding paid up to the date of termination, together with interest at the rate of 10% per annum from the date the Recipient was paid the money to the date the Recipient returns the money.

5. REPORTING REQUIREMENTS AND AUDIT

5.1 The Recipient must report on the progress of the Programme to the Ministry:

- (a) as set out in Schedule 1;
- (b) as otherwise reasonably required by the Ministry; and
- (c) in any format and on any medium reasonably required by the Ministry.

5.2 The Recipient must:

- (a) maintain true and accurate records in connection with the use of the Funding and the carrying out of the Programme sufficient to enable the Ministry to meet its obligations under the Public Finance Act 1989 and retain such records for at least 7 years after termination or expiry of this Agreement;
- (b) permit the Ministry, at the Ministry's expense, to inspect or

audit (using an auditor nominated by the Ministry), from time to time until 7 years after termination or expiry of this Agreement, all records relevant to this Agreement;

(c) allow the Ministry reasonable access to the Recipient's premises or other premises where any of the works are being carried out;

(d) appoint a reputable firm of chartered accountants as auditors to audit its financial statements in relation to the use of the Funding;

6. WARRANTIES

6.1 Each Party warrants to the other Party that it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with this Agreement's terms.

6.2 The Recipient warrants that:

(a) it is not insolvent or bankrupt and no action has been taken to initiate any form of insolvency administration in relation to the Recipient;

(b) all information provided by it to the Ministry in connection with this Agreement was, at the time it was provided, true, complete and accurate in all material respects; and

(c) it is not aware of any material information that has not been disclosed to the Ministry which may, if disclosed, materially adversely affect the decision of the Ministry whether to provide the Funding.

6.3 The Recipient acknowledges that the Ministry has entered into this Agreement in reliance on these warranties.

6.4 The Recipient acknowledges and agrees that the Ministry has made no warranty or representation that any funding or financial support is or will be available to the Recipient in respect of the Programme other than the Funding.

7. INTELLECTUAL PROPERTY

- 7.1 All Intellectual Property Rights in the reports provided under clause 8, Schedule 1 will be owned by the Ministry from the date the reports are created or developed.
- 7.2 All intellectual property produced by the Recipient or its employees or contractors in relation to the Programme is, on creation, jointly owned by the Ministry and the Recipient. Each Party may use (which includes modifying, developing, assigning, or licensing) such intellectual property without obtaining the prior consent of the other Party. On request, the Recipient must provide to the Ministry such intellectual property in any format, and on any medium, reasonably requested by the Ministry.
- 7.3 The Recipient must ensure that material created or developed in connection with the Programme does not infringe the Intellectual Property Rights of any person.

8. CONFIDENTIALITY

- 8.1 The Recipient must:
- (a) keep the Confidential Information confidential at all times;
 - (b) not disclose any Confidential Information to any person other than its employees or contractors to whom disclosure is necessary for purposes of the Programme or this Agreement;
 - (c) effect and maintain adequate security measures to safeguard the Confidential Information from access or use by unauthorised persons; and
 - (d) ensure that any employees or contractors to whom it discloses the Confidential Information are aware of, and comply with, the provisions of this clause 8.
- 8.2 The obligations of confidentiality in clause 8.1 do not apply to any disclosure of Confidential Information:
- (a) to the extent that such disclosure is necessary for the purposes of completing the Programme;
 - (b) required by law; or
 - (c) where the information has become public other than through a breach of the obligation of confidentiality in this

clause 8 by the Recipient, or its employees or contractors, or was disclosed to a Party on a non-confidential basis by a third party.

- 8.3 The Recipient must obtain the Ministry's prior written agreement over the form and content of any public statement made by the Recipient relating to this Agreement, the Funding, or the Programme.

9. LIABILITY AND INSURANCE

- 9.1 The Recipient must effect and maintain insurance that is adequate to cover its obligations under this Agreement. The Recipient must, on request, provide the Ministry with evidence of its insurance cover required under this clause.
- 9.2 The Ministry is not liable for any loss of profit, loss of revenue or other indirect, consequential or incidental loss or damage arising under or in connection with this Agreement.
- 9.3 The maximum liability of the Ministry under or in connection with this Agreement whether arising in contract, tort (including negligence) or otherwise is the total amount which would be payable under this Agreement if the Programme had been carried out in accordance with this Agreement.
- 9.4 The Recipient (including its employees, agents, and contractors, if any) is not an employee, agent or partner of the Ministry or of the Chief Executive of the Ministry. At no time will the Ministry have any liability to meet any of the Recipient's obligations under the Health and Safety at Work Act 2015 or to pay to the Recipient:
- (a) holiday pay, sick pay or any other payment under the Holidays Act 2003; or
 - (b) redundancy or any other form of severance pay; or
 - (c) taxes or levies, including any levies under the Accident Compensation Act 2001.
- 9.5 The Recipient indemnifies the Ministry against any claim, liability, loss or expense (including legal fees on a solicitor own

client basis) (“loss”) brought or threatened against, or incurred by the Ministry, arising from or in connection with a breach of this Agreement by the Recipient or the Programme, or from the negligence or wilful misconduct of the Recipient, its employees or contractors.

9.6 Where the Recipient is a trustee, the Ministry acknowledges that the Recipient has entered into this Agreement as a trustee of the trust named in Schedule 1 in an independent capacity without any interest in any of the assets of the trust other than as trustee. Except where the Recipient acts fraudulently, the Recipient is liable under this Agreement only to the extent of the value of the assets of the trust available to meet the Recipient’s liability, plus any amount by which the value of those assets has been diminished by any breach of trust caused by the Recipient’s wilful default or dishonesty.

9.7 The Recipient must effect and maintain for the term of this Agreement:

- (a) adequate insurance to cover standard commercial risks; and
- (b) other insurance reasonably required by the Ministry.

The Recipient must, upon request by the Ministry, provide the Ministry with evidence of its compliance with this clause.

10. DISPUTE RESOLUTION

10.1 The Parties will attempt to resolve any dispute or difference that may arise under or in connection with this Agreement amicably and in good faith, referring the dispute to the Parties’ senior managers for resolution if necessary.

10.2 If the Parties’ senior managers are unable to resolve the dispute within 10 Business Days of it being referred to them, the Parties will refer the dispute to mediation or another form of alternative dispute resolution agreed between the Parties.

10.3 If a dispute is referred to mediation, the mediation will be conducted by a single mediator appointed by the Parties (or if they cannot agree, appointed by the Chair

of the Resolution Institute of New Zealand) and on the terms of the Resolution Institute’s standard mediation agreement (unless the Parties agree otherwise). The Parties will pay their own costs relating to any mediation or other form of alternative dispute resolution (unless they agree otherwise).

10.4 The Parties must continue to perform their obligations under this Agreement as far as possible as if no dispute had arisen pending final resolution of the dispute.

10.5 Nothing in this clause 10 precludes either Party from taking immediate steps to seek urgent relief before a New Zealand Court.

11. FORCE MAJEURE

11.1 Neither Party will be liable to the other for any failure to perform its obligations under this Agreement by reason of any cause or circumstance beyond the Party’s reasonable control including, acts of God, communication line failures, power failures, riots, strikes, lock-outs, labour disputes, fires, war, flood, earthquake or other disaster, or governmental action after the date of this Agreement (“Force Majeure Event”). The Party affected must:

- (a) notify the other Party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event including an estimate of the time likely to be required to overcome it;
- (b) use its best endeavours to overcome the Force Majeure Event; and
- (c) continue to perform its obligations as far as practicable.

12. GENERAL

12.1 A waiver by either Party of any rights arising from any breach of any term of this Agreement will not be a continuing waiver of any other rights arising from any other breaches of the same or other terms or conditions of this Agreement. No failure or delay on the part of either Party in the exercise of any right or remedy in this Agreement will operate as a waiver. No single or partial exercise of any such right

or remedy will preclude any other or further exercise of that or any other right or remedy.

12.2 Assignment:

(a) The Recipient must not assign, delegate, subcontract or transfer any or all of its rights and obligations under this Agreement. The Recipient remains liable for performance of its obligations under this Agreement despite any approved subcontracting or assignment.

(b) If the Recipient is a company, any transfer of shares, or other arrangement affecting the Recipient or its holding company which results in a change in the effective control of the Recipient is deemed to be an assignment subject to clause 12.2(a).

12.3 This Agreement may only be varied by agreement in writing signed by the Parties.

12.4 If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of the Agreement will be binding on the Parties.

12.5 Any notice to be given under this Agreement must be in writing and hand delivered or sent by email or registered post to the Parties' respective email address, postal address as set out in Schedule 1. A notice is deemed to be received:

(a) if personally delivered when delivered; or

(b) if posted, three Business Days after posting;

(c) if sent by email, at the time the email enters the Recipient's information system as evidenced by a delivery receipt requested by the sender and it is not returned undelivered or as an error,

provided that any notice received after 5pm or on a day which is not a Business Day shall

be deemed not to have been received until the next Business Day.

12.6 This Agreement sets out the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter.

12.7 The provisions of this Agreement relating to termination (clause 4), reporting requirements and audit (clause 5), warranties (clause 6), intellectual property (clause 7), confidentiality (clause 8), and liability and insurance (clause 9) will continue after the expiry or termination of this Agreement.

12.8 This Agreement may be signed in any number of counterparts (including emailed copies) and provided that each Party has signed a counterpart, the counterparts, when taken together, will constitute a binding and enforceable agreement between the Parties.

12.9 This Agreement will be governed by and construed in accordance with the laws of New Zealand.

SCHEDULE 3 – SOCIAL PROCUREMENT OUTCOMES

| Outcome | Measure | When Applied |
|--------------------------------|---|--|
| Employment of targeted workers | Prioritising workers identifying as: <ol style="list-style-type: none"> 1. Māori or Pasifika 2. local workers 3. With the employment of women prioritised at each level where possible. | All |
| Local Businesses | [X]% of the direct contracts and sub-contracts will be awarded to businesses owned and operated by people who reside in the region operating in the region (targeting Māori and Pasifika businesses in particular) | All % to be mutually agreed |
| Supplier Diversity | [X]% of the direct contracts and sub-contracts will be awarded to Māori and Pasifika businesses | Surge Regions and Waikato % to be mutually agreed |
| Skills and training | Training should include, but not be limited to: <ul style="list-style-type: none"> • financial literacy and budgeting • health & safety • people management & development • marketing | Work Programmes over 6 months in duration |
| | <p>A career development plan created within 3 months of a contract being awarded.</p> <p>Internal assessments of all employees' career development plan will be carried out at least once a month and at the end of the contracted works to ensure each employee's career development is progressing.</p> <p>A focus should be individuals obtaining those skills sets and training that will not just benefit them in their current role, but has the ability to keep individuals connected nationally (e.g. traffic management). These should be through an accredited training provider so units are reported correctly on NZQA.</p> <p>Development Plans should include, but not be limited to:</p> <ul style="list-style-type: none"> • individuals' aims and goals • plan to meet aims and goals (if realistic) • clearly identifying needs for skills, knowledge or competence • selecting appropriate development activities • recording of training/development opportunities undertaken • formal recognition/certification of training (e.g. health & safety), and • other roles undertaken. | Work Programmes over 6 months in duration |
| Worker Conditions | 100% of employees will be registered with a suitably qualified health and safety testing organisation including mental health and wellness. | All |

| | | |
|-------------------------------------|---|--|
| | <p>Employees’ wages will increase progressively in line with their career development plan achievements.</p> | <p>Work Programmes over 6 months in duration</p> |
| <p>Environmental Responsibility</p> | <p>Adoption of practises that enable the Work Programme(s) to be delivered sustainably, including by:</p> <ul style="list-style-type: none"> • protecting or enhancing the local ecosystem and its indigenous biodiversity • actively seeking to minimise the carbon impact of the Programme delivery, to support the transition to a net zero emissions economy • minimising waste, re-using materials, and where possible incorporating the principles of the circular economy • using water resources efficiently • using low-impact, sustainably and locally sourced materials and products; and • including resilience to the impacts of a changing climate. | <p>All</p> |

DRAFT

SCHEDULE 4 – REPORT TEMPLATE

QUARTERLY REPORT TEMPLATE



WEST COAST REGIONAL COUNCIL CLMATE RESILIENCE PROGRAMME

| | |
|-----------------------------|---|
| Location and Region: | WEST COAST, SOUTH ISLAND, NEW ZEALAND |
| Contracted Amount: | UP TO \$6,075,000 |
| Report Date: | For the month ending <i>[insert month OR quarter]</i> |

1. Programme Updates

Provide description and analysis of actual against planned progress of each Work Programme to show that the activity is occurring at pace.

| Work Programme | Schedule Reference | Details of progress |
|---|--------------------|---------------------|
| 1. Hokitika Flood and Coastal Erosion Protection | 5(A) | |
| 2. Mawhera Quay Flood Protection Wall Upgrade (Stage 2) | 5(B) | |
| 3. Westport (Buller River) Flood warning system | 5(C) | |

2. Redeployment Outcomes

2.1 Complete the following table for the number of people working to deliver each Work Programme in the current reporting period.

| Work Programme | Schedule Reference | Total People Working | No. previously unemployed | No. local | No. aged 15-24 | No. Māori | No. Pasifika | No. Women | Job type* |
|---|--------------------|----------------------|---------------------------|-----------|----------------|-----------|--------------|-----------|-----------|
| 1. Hokitika Flood and Coastal Erosion Protection | 5(A) | | | | | | | | |
| 2. Mawhera Quay Flood Protection Wall Upgrade (Stage 2) | 5 (B) | | | | | | | | |
| 3. Westport (Buller River) Flood warning system | 5 (C) | | | | | | | | |
| TOTAL | | | | | | | | | |

*Full-time/Part-Time/Contractor/Consultant

2.2 Complete the following total jobs table, showing total current, past and expected future jobs

| Current jobs (this should be the Total People Working in the table above) | People previously but no longer employed on each Work Programme | Expected jobs in the future |
|---|---|-----------------------------|
| | | |
| | | |
| | | |

2.3 Provide any additional narrative to explain the tables 2.1 and 2.2 above, including other relevant information

3. Supplier Diversity Outcomes

Complete the following table for the number and value of each direct or sub-contract awarded to local, Māori and/or Pasifika-owned businesses during the current reporting period.

| Name of business | Business type (Māori, Pasifika, local) | Contract type (direct, sub- contract) | Contract purpose (briefly describe) | Length of contract (months) | Total value of contract (\$) | No. new employees (as a result of contract) |
|------------------|--|---|--|--------------------------------|---------------------------------|---|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

4. Social Procurement Objectives

In an Appendix (please attach) and in the format that best works for you:

- Show achievements to date against the Social Procurement Objectives in a table or other useful format.
- Provide additional narrative to show how tendering, procurement, employment and/or training arrangements are helping to achieve the Social Procurement Objectives, identifying any limitations or further support needed.

5. Financials

Give a summary of funding received and expenditure to date, actual against budgeted, for each **Work Programme** in the Table below or an Appendix (please attach).

| Work Programme | Schedule Reference | Indicative Cost | Actual Spend | PGF funds (yes/no) | Note |
|---|--------------------|-----------------|--------------|--------------------|------|
| 1. Hokitika Flood and Coastal Erosion Protection | 5(A) | | | | |
| 2. Mawhera Quay Flood Protection Wall Upgrade (Stage 2) | 5 (B) | | | | |
| 3. Westport (Buller River) Flood warning system | 5 (C) | | | | |
| Total | | | | | |

6. Forward Work Programme

Outline forward work to be completed in the next month

| Key Milestone | Indicative Timeframe | Outline of Planned Work (for next month) |
|---------------|----------------------|--|
| | | |
| | | |
| | | |
| | | |
| | | |

7. Risks/Issues/Opportunities

Outline any risks and/or issues arising or expected to arise, costs and mitigation

| Risks / Issues | Magnitude/Likelihood | Mitigation |
|----------------|----------------------|------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

8. Communications

Provide an update on media, marketing and communications activity for this Programme

9. Any other information

**SCHEDULE 5
WORK PROGRAMMES**

SCHEDULE REFERENCE: "WORK PROGRAMME 5(A)"

1 **WORK PROGRAMME SUMMARY**

| | |
|---|--|
| WORK PROGRAMME NAME | HOKITIKA FLOOD AND COASTAL EROSION PROTECTION (5A) |
| PDU ID | R07.02925 |
| LOCATION | [DESCRIBE LOCATION] |
| WORK PROGRAMME COST, PLUS GST (IF ANY) | UP TO \$3,750,000 |
| START DATE | THE START DATE FOR ALL PROGRAMMES IS THE DATE THIS AGREEMENT IS SIGNED BY BOTH PARTIES |

2 **WORK PROGRAMME DELIVERABLES**

| Completion Date | Deliverable | Instalment payable on completion of Deliverable plus GST (if any) |
|--|---|--|
| Commencement Date | This Agreement executed by both Parties. | up to \$[10 %] |
| [DATE] [to be somewhere between commencement date and construction commencement date. Refer Schedule 1 Clause 4.3(b)] | All consents required have been obtained. [+ list of other Deliverables if needed] | up to \$[40 %] |
| [DATE] [to be within 12 months of Commencement Date – refer Schedule 1 Clause 4.3(a)] | Construction Commencement Date. [+ list of other Deliverables if needed] | up to \$[15%] [could be more or less % depending on number of deliverables lines per project – just |

| | | |
|--|---|--|
| | | <i>ensure final adds up to 100%</i> |
| [DATE] | [INSERT] <i>[insert list of Deliverables]</i> | up to \$ [15%] <i>[as above]</i> |
| [DATE] | [INSERT this row or more if required] <i>[insert list of Deliverables]</i> | up to \$ [15%] <i>[the above must add up to 90%]</i> |
| [DATE] <i>[End Date as set out in Schedule 1 Clause 4.1.]</i> <i>[Final Report to be within 10 Business Days of End Date - Schedule 1 Clause 8.1]</i> | End Date: Work Programme finished; and Final Work Programme Report received by the Ministry. | [this stays at] [10%] \$375,000 |
| Total Work Programme Costs | | Up to \$3,750,000 |

3

WORK PROGRAMME BUDGET

| ITEM | INDICATIVE COST (\$) |
|---|----------------------|
| Preliminaries | |
| Work Programme Management, Design, Environmental, Property | |
| Work Programme management | |
| Design & consultants support | |
| Environmental costs | |
| Property costs | |
| Material Procurement | |
| Main Construction Contract | |

| | |
|-----------------------------------|--|
| Contractor preliminary & general | |
| Civil works / site works | |
| Construct buildings | |
| [XXXX] | |
| Subtotal | |
| Contingency | |
| [XXXX] | |
| Total Work Programme Costs | |

4 WORK PROGRAMME TIMEFRAME

| KEY MILESTONE | INDICATIVE TIMEFRAME |
|--|----------------------|
| Plan and design | |
| Award detailed design contract (Start Date) | [XX DATE] |
| Award procurement contract | [XX DATE] |
| Obtain all consents | [XX DATE] |
| Obtain all property rights | [XX DATE] |
| Construction | |
| Award construction contract | [XX DATE] |
| Construction commences (Construction Commencement Date) | [XX DATE] |
| Construction complete | [XX DATE] |
| Work Programme Close | |
| Opening event (End Date) | [XX DATE] |

SCHEDULE REFERENCE: "WORK PROGRAMME 5(B)"

1 WORK PROGRAMME SUMMARY

| | |
|---|--|
| WORK PROGRAMME NAME | MAWHERA QUAY FLOOD PROTECTION WALL UPGRADE (STAGE 2) (5B) |
| PDU ID | R07.02926 |
| LOCATION | [DESCRIBE LOCATION] |
| WORK PROGRAMME COST, PLUS GST (IF ANY) | UP TO \$1,950,000 |
| START DATE | THE START DATE FOR ALL PROGRAMMES IS THE DATE THIS AGREEMENT IS SIGNED BY BOTH PARTIES |

2 WORK PROGRAMME DELIVERABLES

| Completion Date | Deliverable | Instalment payable on completion of Deliverable plus GST (if any) |
|--|---|--|
| Commencement Date | This Agreement executed by both Parties. | up to \$[10 %] |
| [DATE] [to be somewhere between commencement date and construction commencement date. Refer Schedule 1 Clause 4.3(b)] | All consents required have been obtained. [+ list of other Deliverables if needed] | up to \$[40 %] |
| [DATE] [to be within 12 months of Commencement Date – refer Schedule 1 Clause 4.3(a)] | Construction Commencement Date. [+ list of other Deliverables if needed] | up to \$[15%] [could be more or less % depending on number of deliverables lines per project – just ensure final adds up to 100%] |

| | | |
|--|---|--|
| [DATE] | [INSERT] <i>[insert list of Deliverables]</i> | up to \$ [15%] <i>[as above]</i> |
| [DATE] | [INSERT this row or more if required] <i>[insert list of Deliverables]</i> | up to \$ [15%] <i>[the above must add up to 90%]</i> |
| [DATE] <i>[End Date as set out in Schedule 1 Clause 4.1.]</i> <i>[Final Report to be within 10 Business Days of End Date - Schedule 1 Clause 8.1]</i> | End Date: Work Programme finished; and Final Work Programme Report received by the Ministry. | [this stays at] [10%] \$195,000 |
| Total Work Programme Costs | | Up to \$1,950,000 |

3 WORK PROGRAMME BUDGET

| ITEM | INDICATIVE COST (\$) |
|---|----------------------|
| Preliminaries | |
| Work Programme Management, Design, Environmental, Property | |
| Work Programme management | |
| Design & consultants support | |
| Environmental costs | |
| Property costs | |
| Material Procurement | |
| Main Construction Contract | |
| Contractor preliminary & general | |
| Civil works / site works | |

| | |
|-----------------------------------|--|
| Construct buildings | |
| [XXXX] | |
| Subtotal | |
| Contingency | |
| [XXXX] | |
| Total Work Programme Costs | |

4 WORK PROGRAMME TIMEFRAME

| KEY MILESTONE | INDICATIVE TIMEFRAME |
|--|----------------------|
| Plan and design | |
| Award detailed design contract (Start Date) | [XX DATE] |
| Award procurement contract | [XX DATE] |
| Obtain all consents | [XX DATE] |
| Obtain all property rights | [XX DATE] |
| Construction | |
| Award construction contract | [XX DATE] |
| Construction commences (Construction Commencement Date) | [XX DATE] |
| Construction complete | [XX DATE] |
| Work Programme Close | |
| Opening event (End Date) | [XX DATE] |

SCHEDULE REFERENCE: "WORK PROGRAMME 5(C)"

5 WORK PROGRAMME SUMMARY

| | |
|---|--|
| WORK PROGRAMME NAME | WESTPORT (BULLER RIVER) FLOOD WARNING SYSTEM (STAGE 2) (5C) |
| PDU ID | R07.02912 |
| LOCATION | [DESCRIBE LOCATION] |
| WORK PROGRAMME COST, PLUS GST (IF ANY) | UP TO \$375,000 |
| START DATE | THE START DATE FOR ALL PROGRAMMES IS THE DATE THIS AGREEMENT IS SIGNED BY BOTH PARTIES |

6 WORK PROGRAMME DELIVERABLES

| Completion Date | Deliverable | Instalment payable on completion of Deliverable plus GST (if any) |
|--|---|--|
| Commencement Date | This Agreement executed by both Parties. | up to \$[10 %] |
| [DATE] [to be somewhere between commencement date and construction commencement date. Refer Schedule 1 Clause 4.3(b)] | All consents required have been obtained. [+ list of other Deliverables if needed] | up to \$[40 %] |
| [DATE] [to be within 12 months of Commencement Date – refer Schedule 1 Clause 4.3(a)] | Construction Commencement Date. [+ list of other Deliverables if needed] | up to \$[15%] [could be more or less % depending on number of deliverables lines per project – just ensure final adds up to 100%] |

| | | |
|--|---|--|
| [DATE] | [INSERT] <i>[insert list of Deliverables]</i> | up to \$ [15%] <i>[as above]</i> |
| [DATE] | [INSERT this row or more if required] <i>[insert list of Deliverables]</i> | up to \$ [15%] <i>[the above must add up to 90%]</i> |
| [DATE] <i>[End Date as set out in Schedule 1 Clause 4.1.]</i> <i>[Final Report to be within 10 Business Days of End Date - Schedule 1 Clause 8.1]</i> | End Date: Work Programme finished; and Final Work Programme Report received by the Ministry. | [this stays at] [10%] \$37,500 |
| Total Work Programme Costs | | Up to \$375,000 |

7 **WORK PROGRAMME BUDGET**

| ITEM | INDICATIVE COST (\$) |
|---|----------------------|
| Preliminaries | |
| Work Programme Management, Design, Environmental, Property | |
| Work Programme management | |
| Design & consultants support | |
| Environmental costs | |
| Property costs | |
| Material Procurement | |
| Main Construction Contract | |
| Contractor preliminary & general | |
| Civil works / site works | |

| | |
|-----------------------------------|--|
| Construct buildings | |
| [XXXX] | |
| Subtotal | |
| Contingency | |
| [XXXX] | |
| Total Work Programme Costs | |

8 **WORK PROGRAMME TIMEFRAME**

| KEY MILESTONE | INDICATIVE TIMEFRAME |
|--|----------------------|
| Plan and design | |
| Award detailed design contract (Start Date) | [XX DATE] |
| Award procurement contract | [XX DATE] |
| Obtain all consents | [XX DATE] |
| Obtain all property rights | [XX DATE] |
| Construction | |
| Award construction contract | [XX DATE] |
| Construction commences (Construction Commencement Date) | [XX DATE] |
| Construction complete | [XX DATE] |
| Work Programme Close | |
| Opening event (End Date) | [XX DATE] |